

wts nobisfields

July 2024

DOING BUSINESS IN GHANA





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FREEDOM AND JUSTICE

DOING BUSINESS IN GHANA

JULY 2024



Ghana has long been regarded as one of Africa's rapidly rising economies.

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Introduction



We are pleased to present to you the Doing Business in Ghana Guide 2024. Doing Business in Ghana is your personal guide to the Ghana legal and taxation system and beyond.

Based on our experience with establishing businesses in Ghana, the Doing Business in Ghana Guide edition gives you an informative view of the key aspects of doing business and investing in Ghana. It covers a wide array of topics, such as the main aspects of corporate law, real estate law, tax law, labour law, immigration law as well as many other legal aspects and regulations of relevance. Not to mention, the geographical position of Ghana as the gateway to investments in Africa combined with its good infrastructure, historic culture, excellent hospitality, stability democracy and the respect for the rule of law makes it the ideal gateway to Africa as the emerging market.

With a DNA of excellence, innovation, reliability and passion, WTS Nobisfields is a leading full-services law and tax firm that provides legal and tax consulting services to multinational companies doing business in Ghana. WTS Nobisfields is a member of WTS Global, headquartered in Netherlands and with offices in 100 countries. We are an independent firm, unaffiliated with any financial institution or audit practice. We are not restricted in its ability to provide a full range of services to businesses, and we are also well positioned in Ghana. We are the leading legal and tax advisers to many of the world's leading corporations on complex issues of today's integrated global market.

If you require more information about any of the topics covered in this guide, our lawyers and tax advisers will be very happy to assist you.

We hope that you find this guide useful and would like to wish you every success in Ghana. Best regards, on behalf of the Partners of WTS Nobisfields

Kind regards



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MANAGING PARTNER

WTS Nobisfields (WTS Ghana)



1.0

GHANA



1.1 General Information

LOCATION	WEST AFRICA, bordering the Gulf of Guinea, between Cote d'Ivoire and Togo
NATIONAL LANGUAGE	ENGLISH
CAPITAL CITY	ACCRA
SEAT OF GOVERNMENT	FLAGSTAFF HOUSE
CURRENCY	GHANA CEDI (GHS)
INTERNATIONAL DIALING CODE	+233
INTERNET DOMAIN	.gh

Ghana has long been regarded as one of Africa's rapidly rising economies. Ghana also offers a highly peaceful business environment because it is one of the most stable countries in Sub-Saharan Africa. This, combined with the availability of accessible infrastructure and statutory institutions, has spurred the expansion of numerous private and public enterprises, making Ghana one of the most attractive business environments in Africa, as well as a favorable investment destination for many foreign companies.

This chapter provides you with an overview of the country's exceptional business environment.

1.2 Country & Cities

LAND INFORMATION	
POPULATION	30.8 million (CENSUS 2021)
TOTAL AREA	238,535 km ² (92,099 sq mi)
NATION	GHANA
LAND BELOW SEA LEVEL	SEA LEVEL
ADMINISTRATIVE REGIONS	16
LARGEST CITIES	ACCRA KUMASI TAMALE

Ghana is an anglophone speaking country, located in Western Africa on the Gulf of Guinea and is bordered in-between Her neighboring countries; Togo, Cote d'Ivoire and Burkina Faso to the east, west and north respectively. Ghana was the first West African country to gain independence from the United Kingdom in 1957 and at the time boasted of a steady and wealthy economy.

Ghana is known for its richness in natural resources which include timber, gold, diamonds, bauxite, manganese, and crude oil. Ghana is also home to Lake Volta, the world's largest artificial lake. Ghana currently holds the title as the world's top second producer of cocoa alongside many other agricultural produce, with well-developed infrastructure to facilitate trade and an outstanding modern educational system. With a population of over 30 million, Ghana is also known for Her impressive ethnic diversity, consisting of a group of who are bound together by a strong sense of patriotism. The country is divided into 16 administrative regions namely; Ashanti, Brong-Ahafo, Oti, Central, Eastern, Greater Accra, Northern, Upper East, Upper West, Volta, Bono East, North East, Western North, Savannah, Ahafo and Western.

1.3 Infrastructure, Traffic & Transport

TRAFFIC & TRANSPORT (2021)	
MAIN AIRPORT	KOTOKA INTERNATIONAL AIRPORT
No. AIR PASSENGERS	1,800,341
PASSENGER DESTINATION	32 DIRECT AIR DESTINATIONS
AIR FREIGHT CAPACITY	38,998 (TONNES)
MAIN SEA PORT	TEMA PORT
ANNUAL THROUGHPUT	18.9 million TONNES (2022 Budget)
MAIN INTERNET HUB	The Ghanaian Internet Exchange (GIX)

When compared to other African developing countries, Ghana has a relatively advanced infrastructure platform. By improving its national infrastructure backbones, Ghana has been able to increase household access to telephone, power, and water services. The government continues to play a vital role in the country's intended socioeconomic development as a developing country. In the country, partnerships with the private sector are the standard for mobilizing appropriate technical and financial resources to drive the execution and achievement of national development goals. The Akosombo Dam, built in the 1960s, was the first noteworthy project in the country's history involving Public Private Partnerships.

Ghana's Infrastructure Plan (GIP) serves as a guide to achieving the national development strategy and the Sustainable Development Goals. The GIP continuously aims to build world-class, resilient infrastructure assets to support Ghana's continued growth and to improve the quality of life in the country. In Ghana, Road transport accounts for 96 percent of freight and 97 percent of passenger transportation. Rail transportation also accounts for only 3% of passenger traffic and 4% of freight traffic.

Ghana aspires to become a West African aviation hub, with a share of the West African aviation market of 10% and subsequently ranked 2nd. Kotoka International Airport (KIA) is the country's busiest airport, processing almost 2 million passengers and 50,000 tons of freight per year. With 32 direct air destinations, KIA offers regular international and regional flights. There are only six domestic flight options, namely: Takoradi, Kumasi, Tamale, Sunyani, Ho and Wa. From KIA, more than 30 airlines operate regular flights and 11 cargo airlines. The Tamale and Kumasi airports have both recently been renovated and upgraded to international airport status, though not to KIA's capacity.

Ghana also possesses two seaports located in Takoradi and Tema, which are governed by the Ghana Ports and Harbours Authority. Both ports have been extensively renovated, resulting in increased efficiency. Ship turnaround times in Ghana's ports are currently among the fastest in West Africa, and the amount of cargo handled has increased significantly.

1.4 Government

HEAD OF STATE	Nana Addo Dankwa Akufo-Addo
HEAD OF GOVERNMENT	Nana Addo Dankwa Akufo-Addo
FORM OF GOVERNMENT	Constitutional Democracy
SEAT OF GOVERNMENT	Flagstaff House

Ghana is a republic with a democratic constitution. The executive president is His Excellency Nana Akuffo-Addo, the current head of state and government, who is directly elected by universal adult suffrage for a maximum of two four-year terms with a minimum of 50% + 1 of the vote. Decentralisation and local government are both established in the constitution, with the Local Government Act 2016 serving as the key piece of law (Act 936). Ghana boasts of one of the most peaceful hand overs of government, thus ranking the country as one of the best, in times of political stability and climate.

The country is organized into sixteen (16) administrative entities or regions, each of which is led by a president-appointed regional minister. At the highest levels of local governance, there are three types of assemblies: metropolitan, municipal, and district. There are also sub-structures that do not have legislative or rating powers but are tasked by the assembly with certain tasks: Sub-metropolitan, district, urban, town, zonal, and area councils and also unit committees.

1.5 Economy

MACROECONOMIC FIGURES	VALUE
GDP	GHS 30,248 million (2023 June)
GDP GROWTH RATE	4.2%
INFLATION RATE	42.5%
TOTAL WORKFORCE	6.7 million
UNEMPLOYMENT RATE	12.6%

Ghana's economy is highly internationalized, with the country serving as one of Africa's most attractive and vibrant trading and industrial hubs.

TRADE (IMPORT & EXPORT)	
EXPORTS	USD 8,564.73 million (July- 2022 – December 2022) USD 8,237.72 million (January-June 2023)
EXPORT COUNTRY COMPARISM TO THE WORLD	RANKED 84th/135 (2021 last update)
EXPORT COMMODITIES	Gold, Cocoa and Crude Oil
IMPORTS	USD 7,243.09 million (July 2022 – December 2022) USD 6,440.22 million (January-July 2023)
IMPORT COUNTRY COMPARISM TO THE WORLD	RANKED 83th/127 (2021 last update)

IMPORT COMMODITIES	Industrial Supplies, Capital & Consumer Goods Foodstuffs, and Refined Petroleum Products.
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Gold, cocoa beans, crude oil and timber products are Ghana's principal exports. Tuna, aluminum, manganese ore, diamonds, and horticulture are among the others. The Netherlands, Burkina Faso, South Africa, and the United Kingdom are its key export partners. Ghana also imports primarily industrial supplies, capital and consumer products, as well as food. China, the United States, Belgium, the United Kingdom, and France are its key import partners.

1.6 Ghanaian People & Culture

THE PEOPLE	GHANAIAN
TOTAL POPULATION	30.8 million (CENSUS 2021)
LANGUAGE	ENGLISH
LIFE EXPECTANCY	64.42 years
ETHNICITY	100+

Ghana is a large, ethnically diverse country with more than 100 ethnic groups. The Akan (Ashanti and Fanti), the Ewe, the Ga-Adangbe, the Mole-Dagbani, the Guan, and the Gurma constitute the six main ethnic groups in Ghana. Ghanaian culture varies from ethnic group to ethnic group. In Ghana, family is a very strong tie that serves as a source of identity, loyalty, and obligation. Ghanaians are deeply religious, with the following percentages: Christian 68.8 percent, Muslim 15.9 percent, traditional 8.5 percent, other 0.7 percent, and none 6.1 percent. Although Ghana has the highest percentage of Christians in West Africa, traditional religions are still widely practiced.

At least 75 of these ethnic groups can be distinguished based on the language they speak. Ghana's official language, like many other ex-colonies in Africa, is English. Akan, Dagaare/ Wale, Dagbane, Dangme, Ewe, Ga, Gonja, Kasem, and Nzema are the nine government-sponsored languages. In Ghana, however, two Akan dialects, Twi and Fante, are commonly spoken.

REVENUE
OPERATIONS

SERVICE
OPERATIONS



2.0

ACCOUNTING
AND FINANCIAL
REQUIREMENTS

2.1 Keeping of accounting records and preparation of financial statements

A company is required keep proper accounting records underlining the financial position and changes in the accounting records, and with respect to the control of and accounting for assets acquired whether for resale or for use in the business of the company, and, in particular with respect to

- a. the sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;
- b. the sales and purchases by the company of property, goods and services; and
- c. the assets and liabilities of the company and the interests of the members in the company.

According to the companies Act 2019, (Act 992), proper accounting records are the records that give a true and fair view of the state of affairs of the company.

The Act, allows for keeping accounting records either electronic or other means and the records can be kept either at the registered office or other location that is deemed fit by the directors of the company. The records shall be open to inspection by the directors, Company Secretary and auditors of the company.

The Companies Act requires that a financial statement comprises of the following;

- i. statement of financial position,
- ii. statement of comprehensive income,
- iii. statement of cash flows,
- iv. statement of changes in equity, and
- v. summary of significant accounting policies and other explanatory notes to the financial statements and;

Ghana has fully adopted International Financial Reporting Standards (IFRS), hence all financial statements are required to the IFRS compliant.

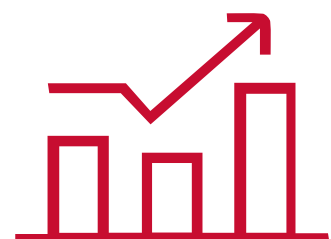
2.2 Circulation of financial statements and reports

After incorporation of the company, the directors of the company have up to eighteen months to prepare and circulate the first financial statements to the members of the company. In subsequent years, the financial statements shall be circulated with fifteen months from beginning of the financial year.

The report being circulated should contain the following:

- a. Signed financial statements
- b. a report by the directors in accordance with section
- c. a report by the auditors in accordance with section

The reports are also required to be laid before members at the annual general meeting of the members of the company.



With respect to the period in which the reports must be circulated, an extension of time can be sought from the Registrar of the Registrar General Department.

2.3 Statement of financial position

The financial statement of a Ghanaian company must give a true and fair view of the state of affairs of the company. The financial statement must be prepared in accordance with the IFRS or any standard adopted by the Institute of Chartered Accountants, Ghana.

2.4 Consolidated financial statements

Consolidated financial statement is prepared by the company with one or more subsidiaries. The consolidated financial statements shall comprise;

- a. statement of financial position,
- b. statement of comprehensive income,
- c. statement of changes in equity,
- d. statement of cash flows, and
- e. notes to the consolidated financial statements.

The financial statements must give a true and fair view of the profit or loss and other comprehensive income and of the state of affairs of the company and the subsidiaries dealt with by the consolidated financial statements as a whole, in so far as it concerns the interest of the company.

As other any other financial statement, it must be prepared in accordance with International Financial Reporting Standards as adopted by the Institute of Chartered Accountants, Ghana.

Where a financial statement of the subsidiaries is consolidated, the financial year end of each of the subsidiaries must coincide with that of the consolidating/parent company. This can only be varied upon a written application by the directors of the company giving a good reason why all the companies within the group cannot have the same financial year end.

Where it appears to the Registrar that it is desirable for a holding company or subsidiary company to extend its financial year so that the financial year of the subsidiary may end with that of the holding company, and for that purpose to postpone the dispatch of the financial statement and reports referred to in section 128, from one calendar year to another, the Registrar may direct that the dispatch of the financial statements by one or other of these companies shall not be required in the earlier years of the calendar.

Where the financial year of a subsidiary does not coincide with that of the holding company, the consolidated financial statements shall, unless the Registrar otherwise directs, deal with the profit or loss and other comprehensive income of the subsidiary, and the state of affairs as at the end of the financial year of the subsidiary ending last before that of the holding company".

2.5 Particulars of emoluments and pensions of directors

The directors are required to disclose information about remuneration of directors. The information should contain the following:

- a. emoluments of the directors.
- b. pensions of the directors or past directors; and
- c. emoluments of the directors or past directors in respect of loss of office during the financial year being reported.

The amount being shown in respect of directors' emolument includes fees, salaries and percentages, expenses, allowances, contributions paid under a pension scheme, and the estimated value of benefits in kind, except benefits of the character and value that are customarily afforded to employees other than directors, paid to, or receivable by, a director in respect of the services of the director as an officer of the company or of an associated company.

The amount to be shown regarding pension of directors includes the pension paid or receivable in respect of services as a director or past director of the company, or in respect of services, while a director of the company, in connection with the management, or as an officer of the company or an associated company, whether that pension is paid to, or receivable by, the director or past director or any other person.

The amount to be reported on emoluments past directors are the sums of moneys paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while a director of the company, or in connection with that person ceasing to be a director of the company.

The amount reported should also include the sum of money and the value of any other valuable consideration paid or receivable in connection with retirement from office, or as damages for breach of contract of service.

2.6 Particulars of amounts due from officers

The company Act specifically require the company to show in a note to the financial statements;

- The individual and aggregate amounts of money due to the company or an associated company at the end of the financial year of the company from an officer of the company or an associated company; and;
- The maximum amount of money due to the company and an associated company at any time during the financial year of the company from any officer of the company or an associated company.

Where the company or an associated company gives a guarantee or security to a person in respect of an indebtedness of an officer of the company or an associated company, the amount guaranteed or in respect of which the security was given, should also be disclosed in the notes to the financial statements.

The information being disclosed exclude loans given in the ordinary course of business of the company. It also excludes amount lesser than GHS5,000 or two percent of the stated capital or amount certified by the directors as haven been given in accordance with the practice adopted or about to be adopted by the company.

2.7 Signing and publication of financial statements

A company is not allowed to issue, publish or circulate a copy of the financial statements unless the following are done:

- a. The company attaches to the financial statements, reports of the directors and auditors respectively.
- b. The financial statements have been approved by the board of directors and, after that approval, signed by two directors on behalf of the board.

However, the publication of a fair and accurate summary of the financial statements and report of the auditors on the financial statements after the financial statements have been approved, and signed on behalf of the board of directors is allowed.

In the event of a breach of the above, the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

2.8 Report of Directors

The report of the directors should include the follow:

- Details on the state of affairs of the company and, if the company is a holding company, the state of affairs of the company and the subsidiaries of the company as a group.
- The amount of money which the directors recommend, to be paid by way of dividend,
- Particulars of entries in the interests register during the financial year,
- Corporate social responsibility of the company and a subsidiary and the amounts spent during the financial year;
- Amount payable by way of audit fees.
- Details of steps taken to build the capacity of directors to discharge their duties.

The report must deal, so far as is material for the appreciation of the state of affairs of the company, with any change during the financial year in the nature of the business of the company or of the associated companies, or in the classes of business in which the company has an interest, whether as a member of another company or otherwise.

The report must also contain a list of bodies corporate in relation to which is fulfilled at the end of the financial year of the company, the condition that

- a. The body corporate is a subsidiary of the company, or
- b. Although the body corporate is not a subsidiary of the company, the company is beneficially entitled to equity shares of the body corporate conferring the right to exercise more than twenty-five per cent of the votes exercisable at a general meeting of the body corporate.

The list referred to in (a) above must distinguish between bodies corporate falling within (a) and (b) above and shall state as regards each company, the name of the company, country of incorporation, and nature of the business carried on by the company.

If the company is, at the end of the financial year, a subsidiary of another company, the report shall also state the name and country of incorporation of the holding company.

If, on an application made by the directors, the Registrar is satisfied that, mention of any of the disclosures referred above would be harmful to the business of the company or any of the associated companies, the Registrar may give an exemption to the company from mentioning any of them in the report.

The directors report must be approved by the board of directors and signed on behalf of the board by two directors.

A director who fails to take the reasonable steps necessary to comply with this section is liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units.

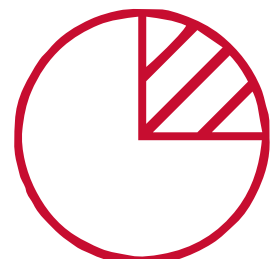
2.9 Report of Auditors

The report Auditors shall be made a qualified auditor who has been appointed as auditor of the company in accordance with section 138 and 139 of the Companies Act, 2019, Act 992. It must be addressed to the members of the company.

The reports of the auditors are issued on both the accounting records and the financial statements of the company.

In Ghana, the auditor's report contains the following statements:

- Whether the auditors have obtained the information and explanations which to the best of the knowledge of the auditors and belief were necessary for the purposes of the audit.
- Whether, in the opinion of the auditors, proper books of account have been kept by the company, so far as appears from the examination of those books, and proper returns adequate for the purposes of the audit have been received from branches not visited by the auditors.
- Whether the statement of financial position of the company and, unless it is designated as a consolidated profit and loss account or statement of comprehensive income, profit and loss account or statement of comprehensive income dealt with by the report, agree with the accounting records and returns.
- Whether, in the opinion of the auditors and to the best of their information and according to the explanations given to the auditors, the accounts give the information required by this Act in the manner so required and give a true and fair view,
 - » in the case of the statement of financial position, of the state of affairs of the company at the end of the financial year, and;
 - » in the case of the profit and loss account or statement of comprehensive income, of the profit or loss for the financial year, of the statement of financial position or the profit and loss account or statement of comprehensive income
- In the case of a holding company submitting group accounts, whether, in the opinion of the auditors, the group accounts have been properly prepared in accordance with this Act so as to give a



true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with so far as it concerns the interests of the company;

- or so as to give a true and fair view of those affairs or of the profit or loss
- Whether the auditors were independent of the company under as provided by the Companies Act.

2.10 Foreign Exchange Controls

All foreign exchange transactions, such as foreign exchange transfers and overseas payment transactions, are regulated and provided for in Ghana, by the Foreign Exchange Act 2003. The Bank of Ghana (BoG) is given sole authority and responsibility for the proper administration of the provisions of the Act

A license must be provided to either a bank or other corporate bodies or persons that the BoG considers competent, in order to conduct the business of dealing in foreign exchange in Ghana.

Payments in foreign currency between residents and non-residents, as well as payments between non-residents, must be made through a locally licensed bank in Ghana. Payments for merchandise exports from Ghana, for example, must be paid through the nonresident's bank to the exporter's bank in Ghana. The term "bank" refers to any establishment that is licensed by the BoG to conduct foreign exchange transfers or any authorized permitted dealer.

All foreign exchange transactions must be reported to the Bank of Ghana by banks or dealers.

Offenses committed in relation to foreign exchange business transactions and transfers carry a fine of not more than five thousand penalty units or a term of imprisonment of not more than ten years or both, as provided by the act.





3.0

COMMERCIAL
CONTRACTS

3.1 General Ghana Contract Law

The general Ghana contract law allows for the freedom of contract where all the underlying general common law elements of contract are met. These are offer, acceptance, consideration, capacity and legality. Nonetheless, there are few statutory restrictions that guide the making of contract by the contract Act of Ghana 1960 Act 25 as well as the Sale of Goods Acts 1962, Act 137. This guidance under the Contracts Act, is in relation to Frustration of Contracts, third party Rights and consideration and formalities which every contract cannot deviate from. For every contract to be legally enforceable in Ghana, it must satisfy all the legal elements of the contract with also due recognition of the statutory modifications in the contract Act. Once these have been adhered to, courts will not seek to write the contract for the parties involved.

The principle of unconscionability is a very indispensable consideration in all contracts in Ghana. Even though courts allow parties the unfettered latitude for freedom of contracts, the court will not give any judicial blessings to a contract that is unconscionable even though all the elements and the statutory modifications have been adhered to.

Commercial agreements on the other hand are governed by the Sale of Goods Act 1962, Act 137. Contracts involved in commercial agreements must have due regard to this statutory law in order to be enforceable. This suggests that parties cannot contract outside this law. This statutory requirements deals with domestic commercial contract that take place in Ghana.

With respect to International Commercial agreements, the general principles of international trade law are applicable.

Even though Ghana is not a member of the United Nations Convention on the international sale of Goods, Ghana is part of the United Nations Commission on International Trade Law.

From this, where the commercial agreement is domestic, the applicable law shall be the Sale of Goods Act, whereas if it is an international commercial contract, the applicable law will be the general principles under international trade

There are other distinctive features of the Ghana contract law. These are

- **RESCISSION:** Rescission is an equitable remedy. It is also a means by which a contract may be discharged. This allows a contractual party to cancel the contract. The purpose of this is to restore the party to the original position before the contract was formed.
- **RESTITUTION:** Where a bargain is made and the price paid, but the defendant fails to deliver the goods, then the plaintiff is entitled to recover the price paid plus interest thereon. The idea is that the injured party must be restored back to the original position he/she was.
- **SPECIFIC PERFORMANCE:** An order for specific performance will compel the party seeking to breach the contract to perform its obligations in accordance with the terms of the contract. These terms must be positive in nature, whereas negative stipulations are normally enforced by an injunction. However, before the courts will compel a party to fulfil the terms of the contract under specific performance, the courts usually give attention to some considerations. These are;
- **INADEQUACY OF DAMAGES:** If the plaintiff can show that damages are inadequate, then the court may grant his claim for specific performance. Damages will be inadequate in the following circumstances:

- i. Where the plaintiff cannot get a satisfactory substitute:
- ii. Where the award of damages would be unfair to the plaintiff:
- iii. Where the quantum of damages is difficult to assess.
- **JUDICIAL DISCRETION:** "Equity will only grant specific performance if, under all the circumstances, it is just and equitable to do so". However, the exercise of this discretion is circumscribed by a number of well-known rules:
 - i. There must be mutuality before specific performance is available. The court does not grant specific performance unless it can give full relief to both parties
 - ii. Specific performance will not be ordered if it is impossible for the defendant to comply with the order, eg, in a contract for the sale of land not owned by the vendor.
 - iii. Specific performance will be refused if the plaintiff has acted unfairly or dishonestly. The equitable principle is that the plaintiff must come to equity with clean hands.
 - iv. Specific performance will be refused if the plaintiff fails to perform a promise which induced the defendant to contract. See:
 - v. Specific performance will be refused if it would cause severe hardship to the defendant.
- **VOID CONTRACTS:** A contract is deemed void when it cannot be enforced by law. From the moment the contract is made, it is considered illegitimate or unenforceable in the face of the law.
- **VOIDABLE CONTRACTS:** A voidable contract is a valid contract which may either be affirmed or rejected at the option of one of the parties. At most one party is bound by the contract. The unbound party may repudiate the contract at which time the contract becomes void.

3.2 General Terms Of The Commercial Agreement

Under general commercial agreement in Ghana, the terms of the agreement can be in writing or orally or partly in writing and partly by word of mouth. Parties are free to contract in respect of the terms of the agreement. Parties engaging in domestic commercial agreements must be guided by the Sale of Goods Act in drafting its terms. It must be acknowledged that the capacity required to legitimize the contract is similar to the general contract law principle of capacity. The terms of the commercial agreement can be either a condition or a warranty.

- **CONDITIONS:** A condition is a major term which is vital or fundamental to the main purpose of the contract. A breach of a condition will entitle the injured party to repudiate the contract and claim damages. The injured party may also choose to go on with the contract, despite the breach, and recover damages instead.

(Note: The word 'condition' also has another meaning. It may mean a stipulation that a contract should not be enforceable except on the happening of a given event or, should be brought to an end on the happening of a given event. The condition is then properly called a 'condition precedent', or a 'condition subsequent' respectively.

- **WARRANTIES:** A warranty is a less important term: it does not go to the root of the contract. A breach of warranty will only give the injured party the right to claim damages; he cannot repudiate the contract.

- **INNOMINATE TERMS:** It may be impossible to classify a term neatly in advance as either a condition or a warranty. Some undertakings may occupy an intermediate position, in that the term can be assessed only in the light of the consequences of a breach. If a breach of the term results in severe loss and damage, the injured party will be entitled to repudiate the contract; where the breach involves minor loss, the injured party's remedies will be restricted to damages. These intermediate terms have also become known as innominate terms.
- **IMPLIED TERMS:** Where the contract is silent on a matter on which a term is normally implied by law, parole evidence may be given to support, or to rebut, the usual implication.
 - » **TERMS IMPLIED BY CUSTOM:** The terms of a contract may have been negotiated against the background of the customs of a particular locality or trade. The parties automatically assume that their contract will be subject to such customs and so do not deal specifically with the matter in their contract.
 - » **TERMS IMPLIED BY THE COURT:**
 - **Intention of the Parties/Terms Implied as Fact:** The courts will be prepared to imply a term into a contract in order to give effect to the obvious intentions of the parties. Sometimes the point at issue has been overlooked or the parties have failed to express their intention clearly. In these circumstances, the court will supply a term in the interests of 'business efficacy' so that the contract makes commercial sense
 - **Relationship Between the Parties/Terms Implied by Law:** In certain relationships and contracts the law seeks to impose a model or standardized set of terms as a form of regulation. Such terms arising from the relationship between the parties will be implied as of law.
 - » **TERMS IMPLIED BY STATUTE:** The Sale of Goods Act implies some terms when it comes to contract for the sale of goods. These statutory implications are reproduced verbatim as follows;
 - **Sale by description:** In a contract for the sale of goods by description, whether or not the sale is by sample as well as by description, there is an implied condition that the goods shall correspond exactly with the description.
 - **Sale by sample:** In a contract for the sale of goods by sample, whether or not the sale is by description as well as by sample there is an implied condition that the goods shall correspond exactly with the sample.
 - **Quality and fitness of the goods:** (1) Subject to this Act and to any other enactment, there is no implied warranty or condition as to the quality or fitness for a particular purpose of goods supplied under a contract of sale except (a) that there is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made, but that condition is not an implied condition
 - i. where the buyer has examined the goods in respect of defects, which should have been revealed by the examination;

- ii. in the case of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;
 - iii. where the goods are not sold by the seller in the ordinary course of the seller's business, in respect of defects of which the seller was not, and could not reasonably have been aware; (b) that where the goods are of a description which are supplied by the seller in the course of the seller's business and the buyer expressly or by implication makes known the purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for that purpose.
- **REPRESENTATIONS:** A representation is a statement of fact made by one party which induces the other to enter into the contract. If it turns out to be incorrect the innocent party may sue for misrepresentation. Breach of a term of the contract entitles the injured party to claim damages and, if he has been deprived substantially what he bargained for, he will also be able to repudiate the contract. If a statement is not a term of the principal contract, it is possible that it may be enforced as a collateral contract (which has developed rapidly in the twentieth century as a significant means by which the difficulties of fixing a statement with contractual force may be circumvented). Certain remedies avail to the buyer when the terms of the agreement have been violated or there is other legitimate reason to invoke the statutory remedy outlined in the Act For a buyer in commercial agreements, where there is a fundamental breach of the obligations of the Seller, the buyer is entitled to reject the goods, refuse to pay or recover the price paid. Same is applicable where the buyer has entered the contract as a result of fraudulent or innocent misrepresentation of the seller.

The buyer is also allowed under the Act to repudiate the whole contract where the seller has refused to pay for two or more installments of the contract if the contract payment terms was to be made by installment, and the repudiation will be affect the whole contract.

Where goods are delivered to the buyer and the buyer rejects the goods having the right to do so, the buyer is not bound to return them to the seller, but it is sufficient if the buyer intimates to the seller that the buyer rejected the goods.

After the buyer has intimated to the seller that the buyer has rejected the goods, the seller is entitled to have the goods placed at the buyer's disposal Where the buyer has paid the price or a part of the price, the buyer may retain the possession of the goods until the seller repays or tenders the amounts the seller has received from the buyer but the caveat is that, buyer may not reject goods which the buyer has accepted. The acceptance of a part of the goods does not deprive the buyer of the right to reject any other part unless the contract is not severable. The buyer also has the remedy of specific performance under the agreement.

In an action for breach of contract to deliver specific or ascertained goods, the Court may by its judgment direct that the contract should be specifically performed without giving the seller the option of retaining the goods on payment of damages. Generally, the commercial agreement protects the party that relies on the general terms and conditions of the contract. Where the contract relates to international business the court will decide the terms in cognizance of the general principles of international trade law and the regulations enacted thereof.

3.3 Consumer Protection/Consumer Sales.

The issue of consumer protection has not been given much attention by the government. There is no general consumer protection law in Ghana, however there is an investigation and consumer reporting office within the Bank of Ghana that has the responsibility of protecting financial consumers and educating them on their rights and responsibility. It must be acknowledged that in the absence of a general law, there exist scattered legislative and regulatory regimes that establishes an inadequate framework for the protection of the consumer. Some of those legislations are the Food and Drugs Board law 1992, General libelling Rules of 1992, Public utility Regulatory Commission Act 1997, National Communications Act 1996 and the Standards Decree of 1973

In Ghana there is the Consumer protection Agency which is an advocacy group and there is not much attention given to its work by the government.

3.4 Agency Agreements

An agent is a person who finds himself in such a situation or position that he is able to alter the legal position of his principal with that of a third party in a contractual relationship. This presupposes that the agent who enters into a commercial agreement does so on behalf of the principle and the principle is bound by such agreement. The doctrine of agency is a common law doctrine which allows third parties to be liable or to benefit from a contract in which they are not parties to and so the doctrine of privity of contract does not apply to the concept of agency. The common law doctrine of agency regulates agency agreements in Ghana

The liability of the principal to the third party depends upon whether the principal is a disclosed or an undisclosed principal. A disclosed principal is one whose position and status was known to the third party at the time that the third party was contracting with the agent. In the law of agency, a disclosed principal is liable on the contract even though it is the creation of the agent without his knowledge. An undisclosed principal is one whose existence was not made known to the third party when he was contracting with the alleged agent. Again, in the law of agency, an undisclosed principal is not liable on the contract made between the agent and the third party.

3.5 Distribution Agreements

In Ghana there is no legislation on distribution agreements. In distribution agreements, the distributor purchases products or services from the supplier and resells them to third parties in its own name and for its own account. This is clearly a commercial transaction that is guided by the Sale of Goods Act and the default rules of contract law.

3.6 Franchise Agreements

In Ghana there is no legislation on franchise agreements. In the absence of a clear rules governing franchise agreements in Ghana, the default rules of contract will apply. Although there is no definition by any statute in Ghana what a franchise agreement is , franchise agreement generally is an agreement to license, control, and to protect the franchiser's trade mark ,copyright ,patent or business know-how, or combined with a proven plan of business operation, in return for royalties, fees, or commissions. In Ghana it is acknowledged that, the absence of a legislation puts many small and local businesses into grave disadvantage, particularly in the negotiations of terms and references.



4.0

DISPUTE
RESOLUTION

4.1 Jurisdiction

In Ghana, the Judiciary is made up of the Superior Courts of Judicature and the lower courts.¹ The Superior Courts of Judicature consist of the Supreme Court, the Court of Appeal, and the High Court. The lower courts consist of the Circuit Courts, the District Courts, Family Tribunals and Juvenile Courts. All the courts have civil and criminal divisions/all the courts deal with civil and criminal matters.

4.2 The Supreme Court

The Supreme Court is the highest court in Ghana and is the final appellate body of the whole court system in Ghana.

The Supreme Court has exclusive original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution and all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.²

The Supreme Court also has appellate jurisdiction and hears appeals from the Court of Appeal.³

The Supreme Court has supervisory jurisdiction over all Courts and any adjudicating authority in the Country.⁴

Civil court proceedings in the Supreme Court are regulated by the following Constitutional Instruments:

- The Supreme Court Rules, 1996 (C.I. 16) as amended by;
- The Supreme Court (Amendment) Rules, 1999 (C.I. 24);
- The Supreme Court (Amendment) Rules, 2012 (C.I. 74);
- The Supreme Court (Amendment) Rules, 2016 (C.I. 98) and
- The Supreme Court (Amendment) (No.2) Rules, 2016 (C.I. 99)

4.3 The Court of Appeal

The Court of Appeal only has an appellate jurisdiction; it serves as the appellate court for appeals from the High Court and the Circuit Courts, unless otherwise provided by statute.⁵ A party aggrieved by a ruling of the Court of Appeal may appeal to the Supreme Court.

Civil court proceedings in the Court of Appeal are regulated by the following Constitutional Instruments:

- The Court of Appeal Rules, 1997 (C.I. 19) as amended by;
- The Court of Appeal (Amendment) Rules, 1999 (C.I. 25) and
- The Court of Appeal (Amendment) Rules, 2016 (C.I. 100).

¹ Constitution 1992, Art 126(1)

² Constitution 1992, Art 130(1)

³ Constitution 1992, Art 131

⁴ Constitution 1992, Art 132

⁵ Constitution 1992, Art 137(1)



4.4 High Court

The High Court has original jurisdiction in all matters⁶. It has appellate jurisdiction and hears appeals from criminal judgments from Circuit Courts and all appeals from the lower courts i.e. District Courts, the Juvenile Courts and the Family Tribunals. The Court also has supervisory jurisdiction over all lower courts and any lower adjudicating authority.⁷

A party aggrieved by an order or judgment of the High Court in either a civil or criminal matter may appeal to the Court of Appeal.

Civil court proceedings in the High Court are regulated by the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended by the High Court (Civil Procedure) (Amendment) Rules, 2014 (C.I. 87).

4.5 Circuit Courts

The Circuit courts have original jurisdiction in civil actions that include; actions arising under contract or tort or for the recovery of all liquated claims that do not exceed GHS 2,000,000.00, as well as, all landlord and tenant cases, ownership, possession, occupation and title to land cases, applications for Probate and Letters of Administration where the value of the estate does not exceed GHS 2,000,000.00, divorce and other matrimonial causes and, custody applications.⁸

The courts also have original jurisdiction in all criminal matters with the exception of treason and offences punishable by death.⁹

A party aggrieved by a judgment or ruling of a circuit court in a civil action may appeal to the Court of Appeal whereas a party aggrieved by a judgment of the court in a criminal matter may apply to the High Court.

Civil court proceedings in the Circuit courts are also regulated by the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended by the High Court (Civil Procedure) (Amendment) Rules, 2014 (C.I. 87).

4.6 District Courts

The District courts have original jurisdiction in civil actions that include; actions arising under contract or tort or for the recovery of all liquated claims that do not exceed GHS 500,000.00, as well as, all landlord and tenant cases, ownership, possession, occupation and title to land cases, applications for Probate and Letters of Administration where the value of the estate does not exceed GHS 500,000.00, divorce and other matrimonial causes and, custody applications.¹⁰

With regard to criminal matters, the courts have original jurisdiction to try summarily offences punishable by a fine not exceeding Five Hundred (500) penalty units¹¹ or imprisonment for a term not exceeding two (2) years or both or offences that the Attorney-General deems suitable to be tried summarily.¹²

6 Constitution 1992, Art 140

7 Constitution 1992, Art 141

8 Courts Act 1993, s.42(1)

9 Courts Act 1993, s.43

10 Courts Act 1993, S.47(1)

11 One penalty unit is GHS 12.00

12 Courts Act 1993, s.48(1)

A District court may also hear and determine an action arising under the Children's Act 1998 (Act 560), and act as the Family Tribunal and exercise its powers conferred on the tribunal.¹³

A party aggrieved by an order or judgment of a district court may appeal to the High Court.

Civil court proceedings in the District courts are regulated by the District Court (Civil Procedure) Rules, 2009 (C.I. 59).

4.7 Course Of Civil Proceedings In Court

Subject to the rules of the relevant court, a party may begin or carry on proceedings in person or by a lawyer,¹⁴ provided the lawyer has not previously acted for the other side. However, a corporate body can only begin or carry on proceedings through a lawyer unless permitted to do otherwise by an express provision of a statute.¹⁵ Minors and persons with disabilities are required to engage a lawyer to represent them.¹⁶

Conversely, there is a legal aid scheme available to parties who cannot afford legal representation. The Legal Aid Scheme was established to provide legal aid to any person who is a party to a proceeding concerned with the enforcement of any provision of the Ghana Constitution,¹⁷ or a person who earns the national minimum wage or less and desires legal representation in criminal matters or civil matters that relate to landlord and tenant issues, insurance, inheritance, maintenance of children and any other civil matters as prescribed by the law.¹⁸ In addition, a court may assign a lawyer by way of legal aid to a party to proceedings before that court where it is desirable and in the interests of justice that the party should have legal aid but is financially unable to obtain or afford the services of a lawyer.¹⁹

Commencement of Proceedings

Commercial claims and most civil claims are usually commenced by the issuance of a Writ of Summons by the Plaintiff or its lawyer (i.e. the party commencing legal action) to be served on the Defendant(s).

The nature of the claim would determine the mode of commencing legal action and the subsequent procedure in a court of law.

The Writ of Summons is accompanied by a Statement of Claim which sets out in detail the particulars of the claim. There must be a cause of action that has accrued stated in the Statement of Claim. The Statement of Claim should contain the factual and legal issues of the claim.

Writs and other legal processes are filed at the registry of the court. Every court has a registry. The Registrar is the most senior court officer in charge of the administration of cases in the court.

Bailiffs are court officers who serve court processes filed at the registry of the court on the opposing party.

¹³ Courts Act 1993, s.50

¹⁴ High Court (Civil Procedure) Rules, 2004 (C.I. 47), Or 4 r 1(1)

¹⁵ High Court (Civil Procedure) Rules, 2004 (C.I. 47), Or 4 r 1(2)

¹⁶ High Court (Civil Procedure) Rules, 2004 (C.I. 47), Or 4 r 1(3)

¹⁷ Legal Aid Scheme Act 1997, s.2(1)

¹⁸ Legal Aid Scheme Act 1997, s.2(2)

¹⁹ Courts Act 1993, s.114

When the Writ is filed at the registry of the relevant court, a bailiff serves the Writ of Summons on the Defendant and upon receipt of the Writ, the Defendant or his/her lawyer must enter appearance within eight (8) days or within the specified period stated on the Writ of Summons.

Where the Defendant is located out of the jurisdiction of the courts or out of the country, the Plaintiff is not permitted to serve the Writ of Summons on the Defendant but rather a notice of the Writ is to be served. However, the Plaintiff must apply to the court to seek leave to serve the notice of the Writ out of the jurisdiction.

A Defendant who enters appearance is letting the court know that it intends on defending the claim(s) against it. A Defendant may file a 'Conditional Appearance' if it has a problem with the mode of service of the Writ or the Writ itself.

In addition to filing the notice of Appearance, the Defendant must also file its Statement of Defence in response to the Writ of Summons and the Statement of Claim. The Defendant must file its Defence within fourteen (14) days after the last day allocated for entering Appearance. Where the Defendant believes it also has a claim against the Plaintiff, the Defendant may include a 'Counterclaim' in the Statement of Defence.

Upon the receipt of the Statement of Defence, the Plaintiff may, if it deems necessary to respond to averments in the Statement of Defence, file a Reply in response. The Plaintiff must respond to the Statement of Defence within seven (7) days after the service of the Statement of Defence, if it decides to respond. A Reply is mandatory where a Counterclaim is filed; the Plaintiff will incorporate its Defence in the Reply.

Seven (7) days after the service of a Reply or the service of a Statement of Defence (where no Reply has been filed), pleadings are closed.

Discovery and Inspection of Documents

After the close of pleadings, there shall be a discovery of documents,²⁰ unless the parties agree to dispense with or limit the process of discovery to specific documents.²¹ The parties are required to make and file for service on the other party a list of documents which are or have been in that party's possession, custody or power relating to any matter in question between them in the action within fourteen (14) days after pleadings are closed.²² In addition, a party may make an application to the court for the court to order the other party to serve on it a list of documents in that party's possession, custody or power relating to any issue in the matter.²³

Application for Directions

By the close of pleadings, the parties would have determined the issues in dispute and would need the court to give directions on how the matter should be conducted further. Thus, an application for directions must be made to the court by the parties (usually the Plaintiff) to enable the court consider the preparations for trial.²⁴ This is the first appearance of the parties in the courtroom. At the hearing of the application for directions, the judge deals with all matters which have not already been dealt with and gives directions as to the future course of the action that appears best to secure the just, expeditious and inexpensive disposal of the case.²⁵

20 Or 21 r 1(1), C.I. 47

21 Or 21 r 1(2), C.I. 47

22 Or 21 r 2(1), C.I. 47

23 Or 21 r 3, C.I. 47

24 Or 32 r 1, C.I. 47.

25 Ibid

After dealing with all pending matters, the court will give directions for the management of the case and set a time table for the taking and giving of directions and the trial or; fix a case management conference and give directions relating to the management of the case as the court thinks fit.²⁶ The parties must file their respective witness statements together with a pre-trial checklist within a specified period ordered by the court.

Case Management Conference

At the case management conference, the judge, together with the parties, goes through the pre-trial checklist to determine whether which witnesses the parties intend to rely on and inspects the exhibits attached to the witness statements (written testimonies of the parties, also called Evidence in chief). When the judge is satisfied, a date(s) is set for trial.

Trial

At the trial, the Plaintiff, the Defendant and their respective witnesses swear an oath and are cross-examined by opposing counsel and re-examined if deemed necessary by their respective lawyers.

Once the trial is over, the court orders the lawyers for the Plaintiff and the Defendant to file their respective written addresses by a specified date and another date is given for the judgement of the court to be delivered.

A party aggrieved by the judgment of the court is entitled to appeal the judgment within the time set out by rules of the relevant court.

4.8 Incidental applications

During the court proceedings, there may be the need to file incidental applications. The following are some examples of such applications.

- **Judgment in Default of Appearance:** A Plaintiff may apply for a judgment in default of appearance where the Defendant has been served with the Writ of Summons but has failed to enter appearance to the Writ within the specified period. If granted, the judge would proceed and allow the Plaintiff to prove its claim. If the court is satisfied, the court will grant judgment in favour of the Plaintiff.
- **Judgment in Default of Defence:** A Plaintiff may apply for judgment in default of defence where the Defendant has been served with the Writ of Summons and has entered appearance but has not filed its Statement of Defence within the specified period.
- **Summary Judgment:** A Plaintiff may apply for summary judgment where after the Defendant has been served with the Writ and filed its appearance, the Plaintiff believes that the Defendant has no defence to a claim or claims included in the Writ.
- **Orders for Interlocutory injunction/Interim Preservation of property:** Such orders are applied for by a party to maintain the status quo of a property and/or to preserve the property which is the subject matter of the claim pending the final determination of the matter in court.
- **Motion to set aside orders or judgments:** A party may apply to set aside orders or judgments that has been awarded against it.

²⁶ Or 32 r 7A, C.I.87

4.9 Commercial claims

Different procedural rules apply to commercial claims. A commercial claim is any claim arising out of trade and commerce and includes any claim that relates to but not limited to; the formation or governance of a business or commercial organisation; winding up or bankruptcy of a company, business documents or contracts; export or import of goods; carriage of goods by goods by sea, air, land or pipeline; restructuring or payment of commercial debts; insurance and re-insurance; banking and financial services; intellectual property rights; tax matters; and commercial fraud.²⁷

The rules that apply to filing of writs of summons, entry of appearance, defence and reply are applicable to commercial claims. Applications for summary judgment or judgment on admissions can only be filed after the pre-trial settlement conference.

After the close of pleadings, the parties are required to attend a pre-trial settlement conference with an allocated judge in chambers. The purpose of the pre-trial settlement conference is for the parties to attempt settlement of their dispute. If the parties are able to settle their dispute, the parties shall file the terms of settlement at the registry of the court. The terms of settlement will be read over to the parties and be entered as the judgment of the court.²⁸

However, where the parties are unable to settle their dispute at the pre-trial settlement conference, a date shall be fixed for the parties to appear in court for the issues in dispute to be set down for trial.²⁹

4.10 Enforcement of Judgments

A judgment of the court takes effect from the date it is delivered.³⁰ The party in whose favour the judgment is awarded must file an entry of judgment at the registry of the court. An entry of judgment is a formal record containing the full details of the judgment pronounced by the court; without it, the judgment cannot be enforced by any process of execution. The judgment must be presented to the registrar who would enter the judgment into a book kept for that purpose, and subsequently, serve the entry of judgment on the adversary.³¹ The entry of judgment must be served on the adversary before enforcement of the judgment by any process of execution.

4.11 Enforcement of judgments regarding the State

In civil matters where one of the parties is the State (represented by the Attorney-General) and the court makes an order or judgment in favour of the person against either the State, a department of the State or an employee of the State, the court would issue a certificate containing particulars of the judgment or order.³² A certificate will be issued on an application made by the victorious party after twenty-one (21) days from the date of the order or judgment.³³ A copy of the certificate may be served on the Accountant-General, if the certificate contains an order for the payment of money and on the Attorney-General in any other case.³⁴ Where the

²⁷ Or 58 r 2, C.I. 47

²⁸ Or 58 r 7, C.I. 47

²⁹ Or 58 r 8, C.I. 47

³⁰ Or 41 r 5(1), C.I. 47

³¹ Or 41 r 7(1), C.I. 47

³² State Proceedings Act 1998, s.15(1)

³³ Ibid.

³⁴ State Proceedings Act 1998, s.15(2)

order provides for the payment of an amount of money, the certificate will specify the amount of money payable together with the interest.³⁵

An order made in favour of the State against a person in civil proceedings to which the State is a party may be enforced in the same manner as an order made in an action between private persons.³⁶

4.12 Foreign Proceedings in Ghana

Service of a foreign process

Any court process required in connection with civil or commercial proceedings pending before a court or tribunal of a foreign country may be served on a relevant party in Ghana. The foreign court or judicial tribunal may, by a letter of request addressed to the Minister for Foreign Affairs in Ghana, request service of a court process in Ghana. The letter of request should be accompanied with two (2) copies of the process to be served and should be duly translated in English, if it is not an English document. Upon receipt, the Minister would forward the request to the Judicial Secretary with a direction for compliance.³⁷ Subject to any enactment or a civil procedure convention regulating the service of documents on corporate bodies, the process would be served by leaving a copy, and the translation if any, with the person to be served.³⁸

After service of the process has been effected or attempts to effect service of it have failed, the process server must file with the Registrar, a copy of the process and a copy of an affidavit made by the process server, stating when, where, and how service was attempted or effected and the costs incurred.³⁹ The Registrar would subsequently forward to the Minister a certificate with the court seal,⁴⁰ identifying the letter of request for service, a copy of the process received with the letter of request and a copy of the process server's certificate.⁴¹ The certificate would attest that the mode and proof of service were in compliance with the court's rules or the process could not be served for the reasons stated in the affidavit.⁴²

On the other hand, where there exists a Civil Procedure Convention between the foreign country and Ghana, the consular or other authority of that country may send a letter of request together with the process to be served to the Judicial Secretary in Ghana.⁴³ The procedure the process server follows in serving the court process is the same as the procedure where there is no Civil Procedure Convention existing between the two (2) countries. However, the Registrar would send the certificate with the court seal, identifying the letter of request for service, a copy of the process received with the letter of request and a copy of the process server's certificate to the consular or other authority that requested the service of the process.⁴⁴

Obtaining evidence for foreign courts

The High Court may order the examination of a witness within its jurisdiction in Ghana on an application made to it by a court or tribunal of competent jurisdiction in civil or commercial

35 State Proceedings Act 1998, s.15(3)

36 State Proceedings Act 1998, s.16

37 Or 69 r 1(1), C.I. 47

38 Or 69 r 1(4), C.I. 47

39 Or 69 r 1(5), C.I. 47

40 Or 69 r 4, C.I. 47

41 Or 69 r 1(6)(a), C.I. 47

42 Or 69 r 1(6)(b), C.I. 47

43 Or 69 r 2(1), C.I. 47

44 Or 69 r 2(5), C.I. 47

matters before that court or tribunal.⁴⁵ In granting the application, the High Court may order the attendance of the person named in the order to be examined on oath, on interrogatories or to produce specific documents and give such directions as it thinks fit.⁴⁶ Such an order of the High Court made may be enforced in the same manner as an order made in a cause pending in the High Court.⁴⁷

An order made for the examination of a witness may direct the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before any other qualified person as the court considers fit.⁴⁸ Subject to a direction contained in any order, the examination would be taken in accordance with the court rules regarding the examination of witnesses.⁴⁹

Enforcing foreign judgments in Ghana

A judgment of a foreign court may be enforced in a Ghanaian court where substantial reciprocity of treatment will be assured in respect of the enforcement of judgments of the Superior Courts of Ghana in that foreign country. Under the First Schedule of Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993 (L.I. 1575), the judgments of the following foreign courts can be enforced in Ghana:

- The Supreme Federal Court, Federal Court of Appeal and the State High Court of Brazil;
- The Cours De Cessation and the Cours D' Appel of France;
- The Supreme Court of Israel;
- The Corte D' Appello and the Corte D' Cessazione of Italy;
- The Supreme Court of Japan;
- The Court of Appeal and the High Court of Lebanon;
- The Cours Supreme and the Cours D' Appel of Senegal;
- The Tribunal supreme, the Audencia Territorial and the Juez de Primera Instancia of Spain;
- The Court of Cessation and the Court of Appeal of the United Arab Republic;
- The High Court of England, the High Court of Northern Ireland;
- The Court of Session in Scotland; and
- Any court to which an appeal lies from any of those superior courts.

In order for a foreign judgment to qualify for enforcement in Ghana, the judgment must be a judgment of a superior court of a foreign country, not given by the superior court on appeal from a lower court.⁵⁰ The judgment must be final and conclusive between the parties and there is a sum of money payable under it.⁵¹ The sum payable should not be in respect of taxes or other charges of a similar nature or in respect of a fine or penalty.⁵²

45 Courts Act 1993, s.75(1)

46 Courts Act 1993, s.75(2)

47 Courts Act 1993, s.75(3)

48 Or 70 r 4(1), C.I. 47

49 Or 70 r 4(2), C.I. 47

50 Courts Act 1993, s.81(2)

51 Ibid

52 Ibid

The foreign judgment must be registered before it can be enforced. A judgment creditor in a foreign judgment may apply to register the judgment within six (6) years after the date of the judgment or the last judgment given on appeal, if any.⁵³ A judgment creditor is a party to which a debt is owed under a judgment. The Ghanaian court must be satisfied that the judgment debt has not been wholly satisfied at the date of the application and that the judgment is enforceable by execution in the foreign court.⁵⁴

If the court grants the application for registration, the order granting the application must be by the judgment creditor and served on the judgment debtor unless the court directs otherwise.⁵⁵ A register of registered judgments is maintained under the direction of the Judiciary Secretary. A notice of the registration of the judgment must be served on the judgment debtor personally.⁵⁶

A foreign judgment that does not qualify to be registered and enforced under the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993 (L.I. 1575) may be enforced by commencing a fresh action in the Ghanaian court.

4.13 Alternative Dispute Resolution

When a civil proceeding is pending, the courts usually promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the matter.⁵⁷

Arbitration

A party to a dispute where there is an arbitration agreement may, subject to the terms of the arbitration agreement, refer the dispute any person or institution for arbitration; or the Alternative Dispute Resolution Centre to facilitate the arbitration.⁵⁸

In civil matters where there is an arbitration agreement and a party to that agreement commences an action in court, the other party may, on entering appearance and on notice to the Plaintiff, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration. Where the application is granted, the court proceedings would be stayed.⁵⁹

Where there is an action pending before a court and the court is of the view that the action or part of the action can be resolved through arbitration, the court may, with the consent of the parties in writing, refer the action or any part of the action for arbitration.⁶⁰ The court can do this even if there is no arbitration agreement in respect of the matter in dispute.⁶¹

Where the parties, with the aid of the arbitrator, reach an amicable settlement, the arbitration award becomes final and binding as between the parties.⁶² The arbitration award made by an arbitrator pursuant to an arbitration agreement may be enforced by leave of the court as a judgment or order of the court.⁶³ If leave is granted, judgment may be entered in terms of the award.⁶⁴

53 Courts Act 1993, s.82

54 Courts Act 1993, s.82(4)

55 Or 71 r 5, C.I. 47

56 Or 71 r 7, C.I. 47

57 Courts Act 1993, s.72

58 Alternative Dispute Resolution Act 2010, s.5

59 Alternative Dispute Resolution Act 2010, s.6

60 Alternative Dispute Resolution Act 2010, s.7

61 Ibid.

62 Alternative Dispute Resolution Act 2010, s.52

63 Alternative Dispute Resolution Act 2010, s.57(1)

64 Alternative Dispute Resolution Act 2010, s.57(2)

Mediation

The court on its own volition or on application by the parties, may refer the matter or any part of the matter in dispute to mediation if it is of the view that mediation will facilitate the resolution of the matter or part of the matter.⁶⁵ Where the reference does not lead to settlement, the court will continue with the proceedings from the point where the reference was made.⁶⁶

If the parties reach an agreement on the settlement of the dispute, the parties or the mediator may draw up the settlement agreement and the parties must sign it.⁶⁷ By signing the settlement agreement, the parties have agreed that the settlement is binding on them.⁶⁸



5.0

REAL ESTATE

Acquiring land or properties in Ghana is largely dependent on the nature of the ownership of the land and the pre-existing interests in the land as land ownership in Ghana is not as straight-forward as other jurisdictions.

5.1 Types of Land Ownership in Ghana

Vested Lands

Vested lands are lands that the Government of Ghana manages for a group usually because there is a conflict between different parties who are claiming ownership of the land.

State Lands

State lands are lands that have been compulsorily acquired using its powers of eminent domain but under certain laws in the country. The Government pays the owner of the land adequate compensation before it acquires that land. The law allows the owner to value the land and give the government a price. The Government of Ghana also has its valuers at the Land Valuation Division of the Lands Commission.

Customary Lands

A majority of lands in Ghana are owned customarily under the customary land-owning system that is, they are vested in the stools or the skins in the traditional areas within which these lands are situated. The occupant of the stool or skin at each material time holds the land as a trustee and for the benefits of the subjects of the stool.

Family Lands

These are lands owned by families in some areas of Ghana.

5.2 Types of Interests in Land

The interests which can exist in land in Ghana are the following:

- Allodial title;
- Common law freehold;
- Customary law freehold
- Usufructuary interest;
- Leasehold interest; and
- Customary tenancy.



The Allodial title

This is the highest title in land recognised by law. It is a title which in some traditional areas in Ghana, is acknowledged as being held or vested in its stool or skin only. In other traditional areas, it is acknowledged to be held by stools (skins), substools (subskins), clans, families as well as individuals and may have been acquired through compulsory acquisition, conquest, pioneer discovery and settlement, gift, purchase or agreement. The community or the person in whom allodial title is vested has complete and absolute freedom to dispose of it subject only to the laws of the land.

The Customary Law freehold

The Customary Law Freehold is an interest which arises from a transaction under customary law and is usually acquired when a person or group of persons, where the law permits, purchase land outright from the stool or skin, or clan or family which holds the allodial title or acquired by gift or inheritance.

The Customary law Freehold once acquired is an absolute interest in land which is not subject to any proprietary obligations. This interest is however subject to the jurisdictional and cultural rights of the stool or skin, or clan or family which holds the allodial title

The person who holds such an interest has the right of beneficial occupation of the land concerned and may alienate the land or pass it on to his successors without the consent of or payment to the stool, skin, clan or family who holds the Allodial interest in the land.

A person who is not a citizen of Ghana is prohibited by law from acquiring Customary Law Freehold interest in any land in Ghana and where any such transaction is concluded in contravention of the law, the transaction will be considered void.

The Common Law Freehold

A common law freehold arises from a transaction to which the rules of law, generally known as common law, are applicable. It is created only by an express grant by any person. Any person who possesses this type of interest has the right of beneficial occupation of the land.

The Common Law Freehold is of perpetual or uncertain duration, is free from obligations to any person and is heritable and alienable. The Common Law freehold is however subject to the interest of the state, the jurisdictional and cultural rights of the stool or skin, or clan or family which holds the allodial title

Usufructuary Interest.

Usufruct is an interest in land, which is acquired in the exercise of an inherent right by a subject or a member of a stool or skin, or family or clan which hold the allodial title through the development of an unappropriated portion of the land of the stool or skin, or family or clan or by virtue of an express grant; or by virtue of an express grant; or acquired through settlement for a period of not less than fifty years, with the permission of the holder of an allodial title by a non-indigene or group of non-indigenes or the descendants of the non-indigenes or group of non-indigenes, except where the settlement is on agreed terms. It is also acquired through inheritance.

Further, where the alienation of the usufruct is to a person who is not a member of the stool, skin, or clan or family which holds the allodial title, or is not a non-indigene or from the group of non-indigenes who holds the usufructuary interest, the alienation is subject to the written consent of the stool or skin, or clan or family or group and the performance of establishment customary obligations.

The leasehold

This is an interest that is granted by the owner of the land to a person to occupy the land for any fixed duration of time. The lease can be granted for a period as short as one (1) year or as long as ninety-nine (99) years in Ghana. Where a leasehold interest is granted, the payment for the right to occupy the land is made in form of annual rent. The leasehold interest is subject to covenants agreed by the lessor and lessee. A lessee may create a sublease or assign the remainder of its term only where there is no covenant prohibiting the lessee from doing this.

Customary Tenancy

A customary tenancy is an interest in land which is created by contract or arises where a stool or skin, or clan or family which holds the allodial title or a person who holds a customary law freehold or usufructuary interest enters into an agreement with another person to grant that other person an interest in land upon agreed terms and conditions.

Customary tenancy may involve the payment of rent, the sharing of the produce of a farm or the physical partitioning or severance of the farm or land.

5.3 Acquiring Land in Ghana

Buying land, whether it is an undeveloped parcel of land or a land with a building on it, is a huge investment and a long-term commitment. Thus, it is very important for the purchaser to conduct due diligence before deciding to buy land. Due diligence is a complete survey of a land/property to ensure the seller has good title to the land/property.

It is very important for the purchaser, among other things, to investigate the zoning status of the land or property. This zoning status of a land refers to its authorised uses; a land or property may be authorized to be used for residential, commercial or industrial purposes. These checks can be done at the Metropolitan Assembly in the Region in which the land is situated and can be done by the purchaser or its lawyer.

When buying a particular parcel of land, the purchaser should demand a site plan of the said land from the vendor. A site plan is a drawing depicting the site of the land and/or proposed or existing properties. Some of the key elements of a site plan are property boundaries, land topography, vegetation, proposed and/or existing structures, easements, wells and roadways. It is also helpful to hire an independent licensed surveyor to crosscheck the land against the said site plan.

The Lands Commission is a government institution that is responsible for the governance, management and registration of lands in Ghana.⁶⁹ It is therefore crucial that the purchaser conducts its checks on ownership of land at the Lands Commission.

Two (2) copies of the site plan are required in order to conduct a search on an interested land or property at the Lands Commission. As the Lands Commission is the sole hub of land governance and management in Ghana, this process can take some time and as such, the purchaser is advised to start the checks early and continually follow up to get the search results on time to make an informed decision about the purchase.

In addition to the obtaining the search report from the Lands Commission, the purchaser should further investigate the ownership of the land/property. It is important to inspect all the documents in the vendor's possession in order to trace any previous transfers of title of the land. The purchaser can also talk to persons on neighbouring lands to the land the purchaser is interested in acquiring. These persons may have more information about the ownership of the land and if there are any issues with the land such as pending court litigation, this may not be revealed in the search report from the Lands Commission.

Furthermore, it is important for the purchaser to conduct checks from the Metropolitan/Municipal/District Assembly under whose jurisdiction the parcel of land falls to check the zoning status of the said land.

If the purchaser is satisfied that the vendor has good title to the land, it would be prudent for the purchaser to request some form of identification of the vendor.

When the vendor is satisfied the vendor is genuine and has good title to the land, the vendor and purchaser, together with their lawyers, will draft a Sale and Purchase Agreement and an indenture. A Sale and Purchase Agreement is a binding and legal contract between the vendor

⁶⁹ as established by Article 258 of the 1992 Constitution of Ghana and accentuated by the Lands Commission Act 2020 (Act 1036).

and the purchaser that finalises the terms and conditions of the sale of the land. An indenture is a written instrument used to convey an interest in real property, it conveys legal title from the vendor to the purchaser.

Once the documents have been signed by all the relevant parties and their witnesses, a practising solicitor in good standing must sign the back of the indenture and its copies with his stamp duly fixed.

After this has been done and payment has been made, the purchaser can submit the documents to the Lands Commission for the registration and transfer of title to commence the process of obtaining the land title certificate. Land registration is the recording of rights and interest in land as evidenced by documentation so that the purchaser's right to ownership is established and protected. The benefit of registering the land reduces litigation issues and if such issues do crop up, the land title certificate together with other documents are admissible in court. In addition, registration eliminates the possibility of fraud on innocent purchasers as well as secures a party from adverse claims. Registration also allows a party to transfer its interest without any hassle.

It also important for the purchaser to obtain a tax clearance certificate from the Ghana Revenue Authority.

5.4 Leases

A lease is an interest in land which is created to last for a fixed period. This means that every lease has a specific date on which it commences and a date on which it must expire. In Ghana, a lease may be as short as one (1) year or as long as agreed between the parties. Article 266 of the 1992 Constitution of Ghana limits the maximum leasehold interest a non-Ghanaian citizen can have to fifty (50) years.

The person who creates the lease is known as the lessor and the person to whom the lease is granted is known as the lessee. A lease creates a landlord and tenant relationship between the lessor and the lessee. As the lease is for a definite term, the interest in the land reverts to the lessor when the lease comes to an end.

A lease must give the lessee exclusive possession of the land. A lease or tenancy agreement must include:

- The names of the parties of the agreement;
- The starting date and duration of the tenancy;
- A description of the specific property to be leased;
- Obligations of the lessor and lessee;
- Conditions for renewal or non-renewal and other covenants; and
- A specific consideration and the mode of payment.

5.5 Land Title Registration

Interests in land that can be registered are, but not limited to, allodial titles, freehold interests, Usufructory interestleases, vesting assents and mortgages.

Presently there are two (2) legislations in Ghana that govern the registration of instruments and land titles:

- The Land Act, 2020 (Act 1036)
- The Stamp Duty Act, 2005 (Act 689).

The document submitted for registration should be stamped within two (2) months of execution of the indenture/deed/instrument and after paying the stamp duty.⁷⁰

The document is required to be stamped before registration can commence.

After the document has been stamped, the purchaser is required to submit the documents to the Land Registration Division of the Lands Commission where a yellow card is issued as a form of acknowledgment of receipt.

In addition to the yellow card, a letter is given to the purchaser to be sent to the Survey and Mapping Division for a cadastral/parcel plan.

When the cadastral/parcel plan is produced, it is sent to the title office and an amount of money is paid for a publication to be made in the national newspapers. The purpose of this publication is to announce to the nation that that particular parcel of land has been purchased and the title is being registered and thus, gives any person an opportunity to challenge it if that person has an issue with the land, before the land title is issued to the purchaser. A search is also conducted alongside the publication to determine whether there is any contradictory grant.

If after twenty-one (21) days after the publication, there has neither been an opposition to the publication nor any contradictory grant, the land title may be issued to the purchaser.

5.6 Development and Building Permits

Any party that intends on building in Ghana must obtain a building permit irrespective of whether the building is for residential or commercial purposes. A building permit is necessary to ensure the construction of the property in accordance with and conforms to government regulations.

Development and Building permitting are the main instruments for controlling or managing physical development. Such permits are applied for from the Metropolitan/Municipal/District Assemblies within the area that the land is situated.

A development permit in this context refers to a permit issued in relation to planning and building applications. Effective development management promotes orderliness, convenience of movement, public safety and enhanced economic development.

Development Permitting deals with the correct use the land, the appearance of the proposed building and the effect that the development will have on the general environment and neighbouring properties.

⁷⁰ Stamp Duty Act 2005, s.15

A development permit is a written permission authorizing a person to carry out development in accordance with conditions specified in the permit. Such development permit shall give due considerations to matters relating to zoning, planning standards and structural conditions of the proposed development.

A Building Permit allows construction of buildings or structure to proceed on condition of compliance to building code. A Building Permit deals with the manner in which a building is constructed such as its structural stability, fire resistance and weather resistance.





6.0

IMMIGRATION
SERVICES

6.1 Administrative Information

The Ghana Immigration Service (GIS) is an agency of the government of Ghana under the Ministry of the Interior. The GIS regulates examination and authorization of application for visas, entry and residence permits in Ghana. Control of foreign nationals in Ghana, Facilitation of Ghanaian passport application processing, border control and management, Refugee registration, protection, and management. The service advises on and ensures the effective implementation of all laws and regulations pertaining to immigration and related issues.

6.2 Ghana Visa Service

In Ghana, persons other than citizens of Ghana entering Ghana must be in possession of a valid passport or other travel document and a valid visa to enter Ghana. Where a person who appears before an immigration officer and does not have a visa or an emergency entry visa, may be granted a visa subject to such conditions as may be prescribed by regulations, and to such other conditions that the immigration officer may impose.

However, some countries in West Africa (ECOWAS Member States) and some other countries in Africa are exempted from obtaining visa before entering Ghana. Nationals from African Union Member states who are not ECOWAS nationals may obtain a visa on arrival after the payment of the required fees. Similarly, holders of diplomatic or service passports of a selected country, persons in direct airside transit, as well as holders of official passport of some specialized agencies listed in the Visa Regime of Ghana are exempted from obtaining a visa.

Ghana's Visa is basically an authorization given to enable a person to travel and present himself for entry into Ghana. It must be noted that a Visa is not a guarantee of entry into Ghana since it is subject to regularization and the fulfilment of other conditions at the point of entry.

Moreover, there are two broad categories of Ghana Visas; those issued outside Ghana and those issued in Ghana. Visas issued in any of Ghana's 56 Diplomatic Missions abroad cover single or multiple journeys for periods between Six months to Five years.

Visas issued in Ghana, on the other hand, include Transit Visas, Emergency Entry Visas, Visas on Arrival and Re-Entry Visas.

Foreigners are not permitted to employ or to accept employment in Ghana unless they have been granted a work or immigrant quota in Ghana by the Ghana Immigration Service. The Ghana Work Permit has a validity period of 1 year with a renewal option. However, being granted work permit does not make applicant eligible to work in Ghana, applicants need to be granted residence permit by the Director of Immigration to be able to work and remain in Ghana.

Additionally, where a successful applicant has a foreign family, Visa can be granted to them for a period of 6 months. After which applicants who wish to stay, and work may make an application to the Minister of Interior to be issued Ghana work and residence permits to extend their stay. Such permits if granted, will allow them to work and live in Ghana.

6.3 Requirements When Applying for Ghana Entry Visa

- Applicants should be legally resident in the country where Ghana's Mission is sited
- Applicant's passport photographs should have been taken not more than three months prior to the date of submission.

- Applicant should attach a copy of a return ticket or print-out of travel itinerary
- An international certificate of vaccination for Yellow Fever
- Applicant's passport must have validity of at least six (6) months

Additional information:

- 1. BUSINESS VISAS:** In addition to the above, a letter from the applicant's organization in the country where mission is situated, stating among other things the reasons for the visit and a supporting /invitation letter from the applicant's Business Associates in Ghana.
- 2. STUDY VISAS:** In addition to the above, a letter from the institution in the country where mission is situated, stating the purpose of the visit and financial means whilst in Ghana. A letter of acceptance from the institution in Ghana is also required.
- 3. EMPLOYMENT VISAS:** Applicants for employment visas are required to submit in addition to their form an Employment Contract and a proof of Grant of Employment Quota in Ghana.

REFERENCES: Applicant could use any of the following as a reference.

- a. Addresses of Business Associates
- b. Address of Hotel/Lodge
- c. Educational Institution in Ghana

6.4 Requirement When Applying for Work and Resident Permit

- A valid Passport
- Non- Citizen ID Card
- Medical Report
- Police Report
- Application letter
- Employer Business Document (Certificates of Registration, of incorporation, to commence Business)
- Employer Tax Certificate
- Applicant Curriculum Vitae
- Applicant Marriage Certificate (If applicable)
- 2 Passport pictures

6.5 Fees

Services	ECOWAS MEMBERS	OTHER NATIONAL
Work & Resident Permit	\$500.00	\$1000.00
Dependent Resident Permit	300.00 Cedis	300.Cedis
Student Permit	150.00 Cedis	200.00 Cedis
Others (attachment, NGO)	\$300.00	\$300.00

6.6 Immigration Quota

Where a company is registered with the GIPC, it shall qualify for an automatic immigrant quota. The number of expatriate employees that will be guaranteed for the purpose of the immigration quota will depend on the equity capital invested by the company. The maximum number of employees that a company can bring into Ghana in respect of immigration quota is 4. The table below indicate the immigration quota that the company can obtain:

Paid up foreign capital (US\$)	Available quota
50,000 but less than 250,000	1
250,000 but less than 500,000	2
500,000 but not more than 700,000	3
Greater than 700,000	4

When a company commences work in Ghana, it shall have the obligation to, within seven days of commencement, notify the Immigration Quota Committee and the Director of the commencement of work by the expatriate. The company should also furnish the Director with a letter of guarantee in respect of the repatriation expenses of the expatriate. The expatriate shall also have a similar obligation to notify the Director of the commencement of work in Ghana.

Similarly, when the expatriate ceases to work for a company in Ghana, the company shall have the obligation to, within seven days of the cessation, notify the Immigration Quota Committee and the Director of the cessation stating that all requirements for the repatriation of the expatriate and his dependants are complied with. The expatriate will also have the obligation to inform the Director of the cessation.

Where a work permit is issued to an expatriate, the expatriate shall only remain in the employment of the said company. The expatriate cannot engage in any form of business or paid employment in Ghana with any other employer without a written consent of the Director of Immigration.

6.7 Penalties For Immigration Offences

SN	Offences	Penalty
1	Failure to register by a foreign national who remains in Ghana for a period exceeding three months	Summary conviction, may be fined up to GHS500, a term of imprisonment of up to 12 months, or both.
2	Overstaying after the expiration of any permit issued	Summary conviction, faces a fine of not less than GHS100 or a term of imprisonment of not less than 3 months or more than one year.
3	Failure to have a valid permit or violate conditions attached to a permit or visa	Face deportation order
4	Entering Ghana while classified as a prohibited immigrant	A fine of up to GHS1,000 or a term of imprisonment for 6 months to 2 years, or both.
	Assist someone in entering Ghana illegally. This includes sheltering someone they know is about to be deported, helping someone escape from a vessel, aircraft, or vehicle, or ignoring any obligations or directives under immigration law.	A fine of up to GHS1,000, imprisonment for up to 2 years, or both.

6.8 Penalty for not Compliance

Services	ECOWAS Members	Other National
Work Permit	\$50.00/Month	\$100
Dependant Resident Permit	50GHC/Month	80GHC/Month
Student Resident Permit	50GHC/Month	80GHC/Month
Visa	50GHC/Month	80GHC/Month

6.9 Immigration Annual returns

Companies are asked to file on behalf of all expatriate employee an Annual Return with the Immigration Quota committee and the Director of Immigration. The return shall state the names and addresses (including other particulars) of all expatriate employees employed by a company at the beginning of the year. The return must be filed not later than fourteen (14) days after the beginning of each calendar year.

Non-compliance will be expose to a pecuniary penalty of GHS500. Further, a penalty of GHS1,000 will be imposed on the company or an imprisonment term of not less than six months where the initial penalty is not paid within seven days.



7.0

INTELLECTUAL PROPERTY IN GHANA

7.1 Copyright

The Copyright Act of 2005 (Act 690) (Copyright Act) was adopted on May 17, 2005 and replaced the Copyright Law of 1985. The purpose of the new Copyright Act was to bring Ghanaian copyright law into compliance with the Ghanaian Constitution, to help enhance protection of copyrights and related rights in Ghana and to bring Ghana into compliance with its international obligations.

The Copyright Act provides for complete rights of authors in their literary works, artistic works, musical works, sound recordings, audio-visual works, choreographic works, derivative works, and computer software programs. It also provides protection for the related rights of performers and broadcasting organizations. The law provides several limitations and exceptions to those rights.

The Copyright Act provides that ownership of the copyright in all eligible works except folklore vests in the author. In order to be eligible for protection, the Copyright Act requires that the work be original, fixed, and (a) created by a citizen or resident of Ghana; (b) published within Ghana within 30 days of its publication outside Ghana; or (c) if published outside of Ghana is a work in respect of which Ghana has an obligation to grant protection to under an international treaty.

The duration of copyright protection for an eligible work is life of the author plus 70 years. Where a work is a joint work, the duration of protection is for the life of the last surviving author plus 70 years. In the case of a corporate entity, protection is 70 years from the date the work was first made or published, whichever is later. The duration of protection for the related rights for performers is 70 years from fixation or the end of the calendar year in which the performance occurred, and 40 years from the date of making the broadcast or the signal for broadcasting organizations. Special provisions regarding duration also apply for anonymous works, audio-visual works, sound recordings and folklore. Moral rights exist in perpetuity.

Works fall into the public domain either by expiration of the term of protection, renunciation of rights by the author, or by being a work from a foreign country that does not enjoy copyright protection in Ghana.

An author has the right to transfer copyright ownership in the economic right to the work by assignment, testamentary disposition, or operation of law. License of an exclusive economic right may be granted in writing, orally or inferred by conduct. A levy is imposed on every device capable of copying a work protected by copyright. Those levies are collected by the Internal Revenue Service of Ghana (IRS) at the time of importation or production of the device.

Registration of a work with the Copyright Administration (Copyright Office) is not a prerequisite for copyright protection; there is, however, a voluntary registration system in Ghana, the purpose of which is to maintain a record of works, publicize the rights of owners and provide evidence of ownership and authentication of copyright and related rights. Several measures to enforce copyright and related rights are available in Ghana, including criminal prosecution, civil action, customs actions, and mediation.

7.2 Trademarks

The Trademarks Act protects trademark characterized as a sign or combination of signs capable of distinguishing the goods or services of one undertaking from the goods or services of any other undertakings including words such as personal names, letters, numerals, and figurative elements.

Recognizing the importance of trademarks, the government passed the Trademarks Act, 2004 (Act 664) to bring Ghana into compliance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and to strengthen trademark protection in Ghana.

The application for the registration of the trademark must be filed with the Registrar and is subject on the payment of a prescribed fee and further must contain a copy of the trademark and a list of goods or services for which the registration of the trademark is made.

Registration of a trademark by a rights-holder presents an exclusive use of the trademark on that rights-holder. The registration of a trademark is valid for a period of ten years from the filing date of the application for registration. The registration may be renewed for consecutive periods of ten years on payment of a renewal fee, and as long as the fees are paid the trademark can exist in perpetuity, provided that it is still in use in the Republic of Ghana.

Where the Registrar is satisfied that the application for the registration of the trademark has met all the necessary requirements, the Registrar shall publish it as to enable any persons with oppositions to the application to raise such oppositions on grounds where the application has not satisfied all or part of the necessary requirements.

A term is not registerable in Ghana if; (a) it is used only as a trade name; (b) it is incapable of distinguishing the goods or services of one enterprise from the goods or services of another enterprise; (c) it is contrary to public order or morality; (d) it is likely to mislead the public or trade circles with particular reference to the geographical origin of the goods or services, their nature or characteristics; (e) it is identical to or is an imitation of or contains as an element, an armorial bearing, flag, emblem, name, abbreviation or initials of the name, official sign or hallmark adopted by a state, an intergovernmental organization or organization created by an international convention unless authorized by the competent authority of that state or organization; (f) it is identical to or confusingly similar to or constitutes a translation of a trademark or trade name which is well known in Ghana for identical or similar goods or services of another enterprise; (g) it is identical to or confusingly similar to or constitutes a translation of a trademark or trade name which is well known and registered in Ghana for goods or services that are not identical or similar to those under application but the use of the trademark will indicate a connection between those goods or services and the owner of the well-known trademark and the interests of the owner of the well-known trademark are likely to be damaged by the use of the trademark; or (h) if the trademark is identical to a trademark of another owner already on the register or identical to a trademark the subject of an application with an earlier filing or priority date for the same goods or services or closely related goods or services or if it resembles that trademark so closely that it is likely to deceive or cause confusion.

Rights-holders applying for trademark registration should be aware that some of the non-registerable elements (e.g., symbols, flags) must be searched for before application. This may resolve not only in a delay in registration, but in registration of a trademark that may later be subject to cancellation proceedings or to non-registration of a trademark.

Trademark law protects the rights-holder from other persons using the trademark in relation to the goods and services for which the trademark was registered without his or her agreement.

Under the Trademarks Act, the following constitutes an offense: (a) Applying a false description to trade goods (b) Falsely applying to goods a trademark or mark so nearly resembling a trademark as to be likely to deceive; (c) Forging a trademark; (d) Using an article or instrument to forge a trademark; (e) Possessing an article to forge a trademark; (f) Causing the infringement of a mark; or (g) Selling, exposing or possessing for sale or for any purpose of trade or manufacture goods or things to which a forged trademark or a false trade name description is applied or to which a trademark or a mark so nearly resembling a trademark as to be likely to deceive is applied.

7.3 Patents

Ghanaian law grants patent to inventions, which Ghanaian law defines as an idea of an inventor which permits in practice the solution to a specific problem in the field of technology. The invention may be, or may relate to, a product or process.

A patent has a term of 20 years from the date of filing of the application. In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting one year after the filing date of the application for grant of the patent. A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

Where an annual fee is not paid in accordance with the law, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

An invention is patentable if it is new, involves an inventive step and is industrially applicable. In Ghana, absolute novelty is required. An invention is not considered new if it is anticipated by a prior art, that is, everything disclosed to the public, anywhere in the world, by publication in any form, by use or any other way prior to filing. An exception exists, however, for the disclosure to the public if that occurred within twelve months preceding the filing date or where applicable the priority date of such application, provided that the disclosure was a consequence of acts committed by the applicant in title or an abuse committed by a third party with regard to the application.

For patents granted in respect to products and process, Ghana's law confers the rights of exploitation of the patented invention. "Exploitation" involves any of the following acts: (a) making, importing, offering for sale, selling, and using the product; or (b) stocking the product for the purposes of offering for sale, selling, or using. (c) making, importing, offering for sale, selling and using the product in respect of a product obtained directly by means of the protected process; or (d) stocking the product obtained directly by means of the protected process for the purposes of offering for sale, selling or using the product.

However, rights under Ghana's patent law do not extend to: (a) acts done in respect of articles which have been put on the market in any country by the owner of the patent or with the patent-owner's consent; (b) the use of articles on aircraft, vehicles or vessels of other countries temporarily within Ghana; (d) acts done for experimental purposes; or (c) prior use or acts performed in good faith by someone other than the applicant who was using the invention or making effective and serious preparations for its use before the filing date of the patent application.

The owner of the patent shall, in addition to any other rights, remedies or actions available to the owner, have the right to institute court proceedings against any person who infringes the patent by performing, without the consent of the owner; any of the acts which may lead to infringement.

7.4 IP Enforcement

There are many enforcement mechanisms available to IP owners in Ghana. These are the security device for sound and audio-visual recordings, importation of copyright works and the imposition of a levy on devices capable of reproducing copyright works.

The first stage of the enforcement provides that a manufacturer on the approval of the minister must purchase a security device for which he is to attach to each copy of a sound or audio visual recording, without which he cannot sell any copy or will be liable to a penalty.

The second aspect of enforcement seeks to restrict the importation of copyright works without the owner's consent into the jurisdiction.

The last section states that Customs, Excise and Preventive Service office who is unsatisfied that a work is not pirated shall not permit the importation of such works unless it has with it a written declaration by the owner.

Criminal prosecution, civil action and customs actions, may also be available to IP owners in Ghana.

7.5 IP Protection of Software and (IT) Hardware

In Ghana, IP protection of software include, a fine of not more than one thousand penalty units and not less than five hundred penalty units or to a term of imprisonment of not more than three years or both; and in the case of a continuing offence to a further fine of not less than twenty-five penalty units and not more than one hundred penalty units for each day during which the offence continues on any person who infringes a right protected under this Act.



8.0

SOCIAL
SECURITIES AND
PENSIONS

How does Social Security work in Ghana?

The National Pensions Act, 2008 in Ghana establishes a contributory three-tier pension scheme consisting of the following:

- a. A mandatory basic national social security scheme (Tier1)
- b. A mandatory fully funded and privately managed occupational pension scheme (Tier 2)
- c. A voluntary fully funded and privately managed provident fund and personal pension scheme (Tier3)

The basic national social scheme (Tier 1) operates under the Social Security and National Insurance Trust; the occupational pension scheme (Tier2), provident fund scheme, personal pension scheme and other privately managed pension (Tier 3) schemes are managed by trustees approved by the board.

8.1 The Mandatories Scheme (Tier 1 and Tier 2)

The mandatories scheme will be required from the employer to contribute thirteen percent (13%) of each employee's salary towards the Tiers 1 and 2 pension schemes or the member's contribution for an earlier contribution period from the salary in respect of a later period.

Notwithstanding the above, any company will be able to make those deductions in any of the following circumstances

- a. Where failure to make the deduction was as a result of false declaration made in writing by the employee at the time of the employment, or
- b. Where failure to deduct the contribution was due to a mistake or clerical error.

Contributions made by the company under the Tiers 1 and 2 pension schemes are exempt from tax. Thus, company will be able to expense the contribution and treat it as a deductible expense in computing the corporate income tax of the company.

All employees are required to make monthly contribution to the Tiers 1 and 2. Each employee is required to contribute five and a half percent (5.5%) of the monthly salary towards the scheme. The company shall have the obligation to deduct the contributions from the employees' salaries at the end of the month, and it must hold in trust until they are remitted to the approved scheme. The deductions shall be due irrespective of whether the employee's salary is paid or not.

The contribution for the national social scheme is exempt from tax when computing the employment income of the employees.

From the total of 18.5% contribution for Tiers 1 and 2, 13.5% is payable towards Tier 1 whilst 5% is payable towards Tier 2. The contribution must be remitted to the appropriate body within fourteen days after the end of each month to which they relate.

8.2 Voluntary Contribution – Tier 3

The Contributions to the scheme may be made by the employee and the employer, where company elects to contribute to the scheme on behalf of the employees, the contributions do not vest in the employees until the end of the vesting period. However, in the event of severance of company's employment relationship with the employee or in the event of liquidation of the company, contributions made by the company for its employees shall vest in the employees even if the vesting period has not elapsed.

An employee may forfeit part or the total amount of the company's contributions if he leaves the employment period to the end of the vesting period.

Where a contribution is made towards the Tier 3, a total of up to sixteen and a half percent (16.5%) of the total contribution shall be tax deductible. In a situation where both employer and the employee contribute to the scheme. The exemption will be apportioned in proportion to their respective contributions.

8.3 Obligations of the employer (Company)

The employer will be asked to remit the total contribution of eighteen and a half percent (18.5%) to Tiers 1 and 2 also in respect of the Tier 1, the company shall be required to remit thirteen and a half (13.5%) percent out of the total contribution of eighteen and a half (18.5%) percent to SSNIT. The remaining five percent (5%) will be paid to Tier 2.

8.4 Foreign employees' exemption

As mentioned earlier, the Pensions Act applies to every employee in Ghana including expatriate employees. Thus, both the local and expatriate employees are required to register and contribute to pensions in Ghana.

Never less, the practical difficulties faced by the SSNIT has forced them to reconsider the position of the law. Thus, although it is not back by law, in practice, upon an application in writing by an employer on behalf of its employee, SSNIT can exclude expatriate employees who are on a short-term assignment in Ghana from pension contribution where:

- the expatriate is in Ghana under suppliers' contract on short term basis to undertake installation of equipment or machinery acquired by a Ghanaian Company and for training of local workers or
- there is a technology transfer agreement under the Ghana Investment Promotion Centre (GIPC) Act and its regulations and upon proof that the expatriates are in Ghana on a short-term basis to undertake such technology agreement or
- an expatriate is on a short-term assignment in Ghana and there is proof provided by the employer that whilst in Ghana on a short-term duration, he is still a worker of his/her home country

In practice, short-term in connection with pension contribution means any period not exceeding 3 years.

In addition to the above, evidence needs to be provided to show that the expatriate makes similar contribution in his home country.

8.5 Pension Benefits

- Lump sum payment: Where an employee attains the retirement age but does not meet the minimum contribution period of one hundred and eighty months, the employee shall be entitled to a lump sum payment in respect of his or her contribution to the scheme. The amount received by the employee in respect of the benefit is exempt from tax.
- Penalties for non-compliance by the employer: Any company shall be exposed to a pecuniary penalty if it does not remit contributions to the SSNIT within fourteen days after the month to which the contribution relates. Penalty for failure to remit the contributions on the specified date attracts three percent penalty of the contribution payable on a compounding basis.





9.0

TAXATION

In Ghana, tax is collected through two major streams: Direct taxation and Indirect Taxation. Direct taxation is generally on, income, profits and gains from either business operations, employment or investment. Direct taxes imposition and payments differ among industries. For instance, companies in the mining and extraction industries have tax rates different from that of companies in the banking, service or manufacturing industries. Indirect taxes are on the consumption of goods and services (taxable supply). These taxes also come in various forms depending on the goods, industry and service. For instance, In Ghana, taxes (VAT) on wholesale/retail goods are different from that of manufacturers/producers. Likewise, the import duties on alcohol or spirit is different from non-alcoholic drink etc.

The Ghana Revenue Authority (GRA) is the Government body charged with the responsibility of assessing, collecting and accounting for Taxes in Ghana. The authority has three main divisions according to their areas of concentration. They are Customs Division (CD), Domestic Tax Revenue Division (DTRD) and Support Service Division (SSD). Each division is headed by Commissioner. DTD is responsible for the collection of both domestic direct and indirect taxes. The Customs Division is responsible for the collection of taxes and levies at the ports, borders or any other entry points into Ghana. These taxes include Import Duty, Import VAT, Export Duty, Petroleum Taxes Import Excise, interest charge and state warehouse rent. These taxes and levies are collected on general goods as well as vehicles. The Support Services Division (SSD) provides administrative and managerial support to DTD and Customs Division to enable them to perform their operational functions efficiently.

9.1 Income Liable to Tax in Ghana

In Ghana, tax is charged on the income of both resident and non-resident persons. The rate of tax and mode differs depending on the residency status of the person and whether there exist any Double Taxation Avoidance Agreement (DTTA) between the person's resident country and the Government of Ghana. .

Resident persons are taxed on their worldwide income. Thus, the inclusion of both domestic and foreign income. On the other hand, non-resident persons are taxed based on income source in Ghana. Thus, income t accruing in or derived from Ghana.

9.2 Chargeable income, Assessable income

The chargeable income of a person for a year of assessment is the total of the assessable income of that person for the year from each employment, business or investment less the total amount of deduction allowed that person under the Income Tax Act of Ghana.

The assessable income of a person is the income of that person from any employment, business or investment.

The assessable income of a person for a year of assessment from any employment, business or investment is; in the case of a resident person, the income of that person from each employment, business or investment for the year, whether or not the source from which the income is derived has ceased; and in the case of a non-resident person, the income of that person from the employment, business or investment for the year, to the extent to which that income has a source in Ghana; and where the person has a Ghanaian permanent establishment, income for the year that is connected with the permanent establishment, irrespective of the source of the income.

The income of a person from employment, business, or investment has a source in Ghana if the income accrues in or is derived from Ghana.

9.3 Resident person

For the purposes of taxation in Ghana, a person is classified as a resident if any of the following conditions apply:

- a. citizen, other than a citizen who has a permanent home outside of the country and lives in that home for the whole of that year;
- b. present in the country during that year for an aggregate period of one hundred and eighty-three days (183) or more in any twelve-month period that commences or ends during that year;
- c. an employee or an official of the Government of Ghana posted abroad during that year; or
- d. a citizen who is temporarily absent from the country for a period of not more than three hundred and sixty-five continuous days, where that citizen has a permanent home in Ghana.

A partnership is resident if any of the partners is resident in the country at any time during the year.

A company is resident if the company is incorporated under the companies Act 2019 (Act 992) or Companies Act 1963, (Act 179). Act 179 was only replaced with Act 992 in November 2019.

A Ghanaian Permanent Establishment (PE) is also treated as a resident company for the purposes of taxation in Ghana.

9.4 Income from employment

The income of an individual from an employment for a year of assessment is the gains and profits of that individual from the employment for the year or a part of the year. Thus, it include the following;

- i. salary, wages, leave pay, fees, commissions, and gratuities;
- ii. overtime pay and bonuses;
- iii. personal allowances, including cost of living allowance, subsistence, rent, entertainment or travel allowance;
- iv. a discharge 'or reimbursement of an expense incurred by an individual or an associate of the individual;
- v. a payment made for the individual's agreement to conditions of the employment;
- vi. subject to the exemption on retirement contribution, an excess of the retirement contribution made to a retirement fund on behalf of an employee and a retirement payment received in respect of an employment;
- vii. other payments, including gifts, received in respect of the employment;
- viii. other amounts that can be well described as benefit received because of the employment



ix. any other allowance or benefit paid in cash or given in kind if they are derived by the individual during the year from the employment.

The following are excluded from the amount to be considered as income for the purposes of calculating income from employment and tax thereof:

- i. an amount specifically exempted from tax under the Income Tax Laws of Ghana.
- ii. an amount on which a final withholding tax has been applied;
- iii. reimbursement of an expense incurred by an individual on behalf of the employer of that individual that serves the proper business purposes of the employer;
- iv. reimbursement of the dental, medical or health insurance expenses of an individual where the benefit is available to each full-time employee on equal terms;
- v. a payment providing passage of the individual to or from the country in respect of the first employment of that individual by the employer or termination of the employment where the individual is either recruited or engaged outside the country; in the country solely for the purpose of serving the employer or is not a resident of the country;
- vi. a provision of accommodation by an employer carrying on a timber, mining, building, construction, farming business or petroleum operations to that person at a place or site where the field operation of the business is carried on;
- vii. a payment made to employees on a non-discriminatory basis and which by reason of the size, type and frequency of the payments, are unreasonable or administratively impracticable for the employer/to account for or to allocate to an individual;
- viii. redundancy pay.

9.5 Income from business

The income of a person from a business for a year of assessment is the gains and profits of that person from that business for the year or a part of the year.

According to the Ghana Income tax laws. income from business includes the following;

- i. service fees;
- ii. consideration/payments received in respect of trading stock;
- iii. a gain from the realisation/sale of capital assets and liabilities of the business
- iv. an amount derived as consideration for accepting a restriction on the capacity of the person to conduct the business;
- v. a gift received by the person in respect of the business;
- vi. an amount derived that is effectively connected with the business

The following are not included as part of the income (gain/profit) from business.

- i. any amount that is specifically exempted from tax by the tax laws of Ghana.
- ii. an amount on which withholding tax has been applied and the withholding amount is specified as a final withholding tax. (refer to the table on withholding tax) payment; and
- iii. other amounts that are not considered as income from employment or investment

9.6 Income from investment

In accordance with Ghanaian tax laws, the income of a person from an investment is the gains and profits of that person from conducting the investment. The following are considered as part of income, gain and profit from investment for the purposes of taxation:

- i. dividends, interest, annuity, natural resource payment, rent, and royalty;
- ii. a gain from the realisation of an investment asset
- iii. an amount derived as consideration for accepting a restriction on the capacity of the individual to conduct the investment;
- iv. winnings from lottery;
- v. a gift received by the person in respect of the investment; and
- vi. any other amount that the law may specify as accruing from investment for the year.

The following income are excluded as being derived from investment;

- i. any amount that is specifically exempted by the tax laws.
- ii. any payment received on which withholding tax has been applied and the amount of withholding tax is classified as final tax.
- iii. other amounts that are already considered as income from employment or business.

9.7 Amounts/Income exempted from tax

The Ghana Income Tax laws make provisions for specific income to be exempted from being taxed. Thus, any amount earned in this classification is not supposed to be taxed. They are as follows:

- a. Pension pay;
- b. capital sum paid to a person as compensation or a gratuity in relation to
 - i. a personal injury suffered by that person; or
 - ii. the death of another person;
- c. the income of a non-resident person from a business of operating ships or aircrafts, where the Commissioner General is satisfied that an equivalent exemption is granted by the country of residence of that person to persons resident in this country;
- d. the income from cocoa of a cocoa farmer;
- e. the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary or similar educational endowment;
- f. the income of an individual entitled to privileges to the extent provided for by diplomatic immunities or other privileges.
- g. the income of an individual to the extent provided for in an agreement between the Government of Ghana and a foreign government.

- h. a cost of living allowance, other than training allowance paid in place of salary for services rendered abroad by members of the Ministry of Foreign Affairs, and officers attached to official Ghanaian diplomatic or consular missions abroad;
- i. income from a temporary employment of an individual with the Government of Ghana, where that individual is not a citizen of the country, the income is expressly exempt under the employment contract and the income is paid out of the Consolidated Fund;

This list is not limited to the provisions of the law.

9.8 Personal Income Tax/Taxation of individuals

Generally, in Ghana, the individual is taxed on income from employment, business and investment. The method of taxation of the individual depends on the residency of the individual. Whereas non-resident individuals are taxed at a flat rate, resident individuals are taxed at the graduated tax bands. Below is the current tax rates applicable to resident individuals:

a. Yearly rate

Year 2024	Chargeable income	Tax rate %	Tax payable GHS	Cumulative income GHS	Cumulative Tax GHS
First	5,880.00	0	0	5,880.00	0
Next	1,320.00	5%	66.00	7,200.00	66.00
Next	1,560.00	10%	156.00	8,760.00	222.00
Next	38,000.00	17.5%	6,650.00	46,760.00	6,872.00
Next	192,000.00	25.0%	48,000.00	238,760.00	54,872.00
Next	366,240.00	30.0%	109,872.00	605,000.00	164,744.00
Exceeding	605,000.00	35%	210,750.00		

b. Monthly rates

Year 2024	Rate	Range	Cum. Sal	Tax	Cum. Tax
First	0	490.00	490.00	0	0
Next	5%	110.00	600.00	5.50	5.50
Next	10%	130.00	730.00	13.00	18.50
Next	17.5%	3,166.67	3,896.67	554.17	572.67
Next	25.0%	16,000.00	19,896.67	4,000.00	4,572.67
Next	30.0%	30,520.00	50,416.67	9,156.00	13,728.67
Exceeding	35.0%	50,416.67			

Note: these rates were last updated as at the publishing date of this document. Users are advised to confirm the most current rate.

The chargeable income of non-resident individual is taxed at the flat rate of 25%.

An individual who receives gain from disposal of an asset (capital gains) may opt for the gains to be taxed at a rate of 25% instead of it being added to the total income and taxed at the graduated rate.

In determining the chargeable income for the year, the following are considered;

a. Contribution to retirement benefit scheme.

In Ghana, both the individual and employer are required to make a statutory contribution towards pension. Generally, allowance is made for 35% (both employer and employee) contribution of basic salary which is not subject to tax.

Generally, the contribution is the responsibility of both the employer and employee.

Employer pays – 13% of employee's basic salary

Employee pays – 5.5% of employee's basic salary

Total contribution – 18.5%

It is the employer's responsibility to remit the total contribution to Social Security and National Insurance Trust (SSNIT) and an approved Trustee in the ratio of 13.5% and 5% respectively.

The statutory contribution towards retirement benefit is classified into three-tiered scheme, namely;

First Tier (Tier1), mandatory and managed by the Social Security and National Insurance Trust (SSNIT)

Second tier (Tier 2), Mandatory and managed by a private scheme selected by the contributors.

Third Tier (Tier 3), Voluntary contribution managed by a private trustee selected by the contributors.

Where total percentage of the three tiers is more than the 35% cap given, the excess is treated as additional income, added to chargeable income, and taxed accordingly. The maximum insurable earnings is GHC 42,000. The minimum insurable earning is now GHC 401.76

b. Interest incurred on loans towards an individual's residential premises.

Mortgage interest incurred by an individual on a loan contracted towards the construction or acquisition of the individual's residential premises may be claimed as a deduction against the income of that individual. This provision of the law has been made clear that the individual can claim the exemption on a monthly basis. Thus, the amount of interest incurred in a mortgage towards an individual's premises can be deducted from the income before arriving at the chargeable income on which the tax rate is applied.

c. Personal Reliefs

A relief of tax is given to individuals with a certain class of dependency. Personal relief depends on the category of dependant. The amount ranges from One thousand two hundred to two

thousand for a year. The classes of dependants include old age, children, disability (25% of Income from employment and Business), education of children, and training.

Annual personal reliefs

Criteria	Relief (GHS)
Individual with a dependent spouse or at least two dependent children	1,200.00
Aged 60 or above	1,500.00
Aged dependents (over 60 years)	1,000.00 per dependant (limited to 3 dependants)
Professional, technical or vocational training	1,000.00 per dependant (limited to 2 dependants)
Disabled Person(s)	25% of the assessable income from employment or any business.
Professional, technical or vocational training cost	Limited to 2,000.00

d. Non-cash benefits

Non-cash benefits are a kind of allowance that the employee does not receive in cash and yet the tax laws consider it as income/gain to the employee from employment. For these benefits, the employee does not receive it in cash. Therefore, the law provides a standard valuation of the benefit gained and taxed accordingly. They are often referred to as benefits in kind.

Benefits in kind received from employment arises when an employer makes payment for the personal needs of an employee by providing the employee with goods or services (instead of money).

They include:

- i. Vehicle, Fuel and accommodation for an employee
- ii. Employer providing for the education of the employee's children
- iii. Employer giving goods or services free or at a cost lower than the market value to the employee
- iv. Employer providing domestic servants and security to employee
- v. An employer absorbing the tax liability of an employee
- vi. Payment of utility bills by employer on behalf of employee and Share Options

In general, the value of the benefit in kind is quantified according to the market value of the benefit. That means the benefit must be valued as the amount that an independent, reasonable person would pay on the open market to receive the same goods or services.

The rules of quantification of benefits in kind are as prescribed in the

- i. Fourth Schedule of the Act
- ii. Regulations and
- iii. In the absence of Regulations, the market value, less the part of the cost of the benefit paid by the employee to the employer.

Accommodation and vehicle benefit are provided as below in the law:

Accommodation

Type of accommodation provided	Value
Fully Furnished accommodation	10% of total cash emolument
Accommodation only	7.5% of total cash emolument
Furnishing only	2.5% of total cash emolument
Shared accommodation	2.5% of total cash emolument

Type of means of transport provided	Value
Vehicle with Fuel and Driver	12.5% up to GHS1,500.00 of total cash emolument
Vehicle with Fuel	10% up to GHS1,250.00 of total cash emolument
Vehicle only	5% up to GHS625.00 of total cash emolument
Fuel only	5% up to GHS625.00 of total cash emolument

e. Overtime and bonus

Overtime and bonus are taxed at a reduced rate. For overtime, the rate of tax depends on the category of staff percentage of overtime amount of the total cash earnings from employment.

The first rule for overtime is that, the incentive is for qualifying junior staff. That is, a staff who is not a junior qualifying staff does not benefit from the incentive.

Bonus rate also depends on the amount of the bonus as a percentage of annual basic salary. Thus, there is a cap using a percentage of annual basic salary within which a lower rate is applied. Any amount excess of the cap given does not benefit the reduced rate.

Bonus rate within the cap is taxed at 5%. Overtime which is within the first 50% of total earnings is taxed at 5% which any excess is taxed at 10%.

f. Loan benefit

Loan benefit is the deemed benefit an employee receives when he/she obtains a loan from the employer or an associate at an interest rate lower than he/she would have normally paid should the loan be contracted from the general/regular market at the market rate.

For a certain range of loan amounts, the concessionary rate being paid by the employer and compared with the market rate and the difference which normally the excess of the market rate over the concessionary rate is treated as a taxable benefit and added to taxable income to be taxed. In determining the market rate, the GRA relies on the rate issued by the Bank of Ghana.

g. Temporal and Casual workers

Payment to temporal workers is taxed just as permanent workers. Thus, the chargeable income is taxed in accordance with the graduated tax scale. It also implies that all tax reliefs provided in the law apply to the temporal worker in the same manner as the permanent worker.

However, payment to casual workers is taken at a flat rate of 5%.

Return of tax

The employer is required to deduct employment tax called Pay-As-You – Earn (PAYE), file a return, and make payment to the GRA by the 15th or last working day before the 15th (where the 15th is on weekend or public holiday) of the month subsequent to the month for which the employment income was earned. Thus, PAYE for January shall be filed and paid by 15th of February.

At the end of the year, the employer shall file an Employer's Annual Tax Deduction Schedule with the GRA. This return provides a summary of annual income tax payable and tax withheld from each employee. The return is filed within four months after the end of the calendar year.

9.9 Income exempted from tax

In Ghana, the following income is exempted from tax:

- a. Gain from life insurance where the proceeds are paid by a resident insurer.
- ii. A dividend paid to a resident company by another resident company when the company receiving the dividend controls at least 25% of the voting power in the company paying the dividend. This exemption does not apply to certain special industries.
- iii. Interest on an investment paid to a holder or a member of an approved unit trust scheme or mutual fund;
 - Gains made from the sale of Ghana Stock Exchange (GES) listed securities.
 - Income of an approved real estate investment trust
 - Income of an approved unit trust or mutual fund
 - The income of a non-resident person from a business that operates ships or aircraft, provided, the Commissioner-General is satisfied that an equivalent exemption is granted by that person's home country of residence to persons resident in Ghana.
 - Interest and gains by a non-resident person on bonds issued by the government of Ghana.
 - Dividend on an investment paid to a holder or a member of an approved unit trust scheme or mutual fund.

9.10 Taxation of a financial Institutions

9.10.1 Banking

Any other business engaged in by a bank is deemed a separate business activity from that of the bank. It is required that a separate book of account be kept for each business activity. For tax purposes, the income of the other business shall be separate from that of the banking business.

Specific provision for bad debt is allowed as deductible expense should the Commissioner-General be satisfied with the debt and the terms of the provision.

9.10.2 General insurance business

According to the Ghana tax Law, any other business activity of a person who conducts a general insurance business is a separate business from the general insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be computed separately.

For tax purposes, the income of the company includes premiums and proceeds. From the income, deduction is made for proceeds incurred, premium incurred under the re-insurance contract and reserve for unexpired risk at the end of the year.

9.10.3 Life Insurance business

Any other business activity of a person who conducts life insurance. Insurance business is a separate business from the life insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be computed separately.

For tax purposes, the income of life insurance business is determined as follows;

Exclude from the income;

- a. premiums derived by the person as an insurer or a re-insurer; and
- b. proceeds derived by the person under a contract of re-insurance in respect of proceeds.

Do not deduct from the income;

- a. proceeds incurred by the person as an insurer or are-insurer; and
- b. premiums incurred by the person under a contract of re-insurance in respect of proceeds.

9.10.4 Taxation of retirement fund

Retirement contributions received by a retirement fund are exempt from tax. Conversely, retirement payments by the retirement fund are not tax deductible.

9.11 International Tax Arrangement

9.11.1 Branch profit tax

The profit of a branch of a non-resident entity is taxed at the rate of 8%. This tax is a final tax. The tax must be paid within thirty days after the end of the basis period.

The corporate income tax rate on branch profits is the same rate as local companies. The profit of the branch is subjected to the same tax rate applicable to resident entities.

When the non-resident company repatriates profit to its shareholders, the profit of the non-resident person is taxed at the rate 8%. This tax is a final tax. The tax must be paid within thirty days after the end of the basis period.

9.11.2 Double Taxation Relief

The income tax act makes allowance for relief for foreign taxes paid by resident persons. The tax paid should have been sourced from the foreign country and as well be included in the assessable income of the resident individual.

9.11.3 Double tax treaties

Double tax treaties/agreements (DTT) provide tax relief for residents of contracting state with the jurisdictions of the treaty parties. Ghana has sign double tax treaties with the following countries; Belgium, Germany, South Africa, France, Denmark, Italy, Switzerland, The Netherland, United Kingdom, Czech Republic, Singapore, Morocco, Mauritius.

DTT with the republic of Ireland is yet to be rectified by the Parliament of Ghana.

Other countries for which the government of Ghana currently arranging for treaty include Qatar, Nigeria, Norway, Saudi Arabia, Sweden, the United Arab Emirates, Seychelles, Tunisia, Egypt and the United States.

Country/ Type of Income	Dividends (where the recipient holds at least 10%/25% of shares)	Dividend (in any other case)	Royalties	Technical or management service fee	Interest
United Kingdom	7.5	15	15	10	15
Germany	5	15	8	8	10
South Africa	5	15	10	10	10 (5% if derived by non-resident bank)
Italy	5	15	10	10	10
The Netherland	5	10	8	8	8
France	7.5	15	15	10	15
Denmark	5	15	8	8	8
Belgium	5	15	10	10	10
Switzerland	5	15	8	8	10
Czech Republic**	6	6	8	8	10
Morocco	5	10	10	10	10
Singapore	7	7	7	10	7
Mauritius	7	7	8	10	7
Ireland*	7	7	8	10	7
Malta**	6	6	8	12	7
Norway**	7	15	10	12	7

Note:

* Agreement yet to be approved by Parliament

** Agreement approved by Parliament but has not entered into force

The Government of Ghana has also signed DTTs with Qatar, and United Arab Emirates, but are yet to enter into force.

9.12 Anti Avoidance Schemes

9.12.1 General Anti-Avoidance Rule (GAAR)

For the purposes of determining tax liability under Act 896, the Commissioner-General may re-characterize or disregard an arrangement that is entered into or carried out as part of a tax avoidance scheme:

- i. Which is fictitious or does not have a substantial economic effect; or
- ii. Which form does not reflect its substance.

An arrangement includes an action, agreement, course of conduct, promise, transaction, understanding, or undertaking, which is express or implied, enforceable by legal proceedings or not, and unilateral or involves two or more persons.

The Commission General has the power to disallow any expenses which he considers unfit for tax deductions. Before an expense can be allowed as a relief for tax purposes, it must be wholly, necessarily, and exclusively incurred by the business. Wholly means all the cost was incurred for the stated purpose. It means completely. Exclusively means that none of the costs incurred was for private purpose. Necessarily means the cost needed to be incurred to achieve the business objectives.

The Commissioner General will use these criteria to assess any allowable business expense for tax relief.

9.12.2 Income splitting

Income splitting is where a person attempts to split the income of one person with another with the aim of taking enjoying the tax advantage of the other person so as to reduce tax liabilities. Where a person attempts to split income with another person, the commissioner of the GRA may prevent this by adjusting the chargeable income of both persons or re-characterise the source and type of any income, loss, amount or payment to prevent a reduction in tax payable as a result of the splitting of the income. In Ghana, Income splitting is not allowed.

9.12.3 Thin capitalisation

Where a resident entity that is not a financial institution and in which fifty percent (50%) or more of the underlying ownership or control is held by an exempt person either alone or together with an associate has a debt-to-equity ratio in excess of three-to-one (3:1) at any time during a basis period, a deduction is disallowed for any interest paid or foreign currency exchange loss incurred by that entity during that period on that part of the debt which exceeds the three-to-one (3:1) ratio, being a portion of the interest or loss otherwise deductible but for this subsection

"Exempt person" means

- i. A non-resident person.
- ii. A resident person for whom the interest is paid by a resident entity to an exempt person or for whom a foreign exchange gain is realized with respect to a debt claim against the resident entity (a) Constitute exempt income or (b) Is not included in ascertaining the exempt assessable income of that person; and

- iii. "resident entity" means a resident partnership, a resident company, a resident trust, or permanent establishment of a non-resident person in the country

The object of thin capitalization is to prevent the erosion of a company's profit by making sure that business profit is not paid to non-resident business owners as interest on loan without any cap.

9.12.4 Taxation of undistributed profits

A resident company that pays a dividend to a shareholder shall withhold tax on the amount of the dividend. The Withholding rate for this transaction is 8%.

Also, the tax law permit in cases where the Commissioner-General is satisfied that a company controlled by not more than five (5) persons and their associates does not distribute to its shareholders as dividends, a reasonable part of the income of the company from all sources for a basis period within a reasonable time after the end of the basis period, the Commissioner-General may, by notice in writing treat as a dividend, that part of the income of that company which the Commission-General determines to be a dividend paid to its shareholders during that period or any other period.

9.12.5 Treaty Shopping and Anti-Treaty Shopping

Treaty Shopping is where a person not a resident of any of the two jurisdictions that have entered into a treaty indirectly benefits from tax arrangement. Ghana's principles on the anti-treaty provision may include:

To the extent that the terms of an international arrangement to which the Republic is a party are inconsistent with the provisions of the tax law, the terms of the international arrangement shall prevail over the provisions of the tax law.

The conditions under which this may be held include.

- a. Only to an international arrangement ratified by Parliament under Article 75 of the Constitution; and
- b. subject to
 1. Where an international arrangement requires Ghana to exempt an amount from tax or subject an amount to reduced taxation, the exemption from or reduction of tax is not available to an entity that
 - i. For the arrangement, is a resident of the other contracting state; and
 - ii. Fifty percent or more of whose underlying ownership is held by persons who, for the purposes of the arrangement, are not residents of the other Contracting State or Ghana
 2. Despite any provision in tax law, where the Commissioner-General is of the opinion that a person might otherwise secure a tax benefit under a tax avoidance arrangement, the Commissioner-General may adjust the tax liability of that person in a way that the Commissioner-General considers appropriate to counteract the tax benefit.

9.12.6 Transfer pricing (TP)

In Ghana, the transactions between related parties are regulated by the Transfer Pricing Regulations (TPRs). The regulations require that transactions between related parties be done at an arm's length. That is, the terms of the transactions do not differ from what would have transpired on a comparable transaction between unrelated parties.

The Transfer Pricing Regulations (TPRs) provide various methods of determining the acceptable (arm's length) price between related parties. The Organisation for Economic Co-operation and Development (OECD) on transfer pricing also provide guidelines on Transfer Pricing determination.

The Transfer Pricing Regulations requires that all companies that have related party transactions submit annual Transfer Pricing returns. The regulations entail the following key provision:

a. TP Documentation and Filing Requirements:

Regulation 11(1) and Regulation 12(2) requires Taxpayers who engage in related-party transactions to file their Transfer Pricing returns and maintain contemporaneous documentation by a specific deadline as follows.

Table 1: Documentation and Filing Requirements

Annual Transfer Pricing Returns	Not later than four months after financial year end.
Country-by-Country-Reporting (CbCR)	Not later than twelve months after financial year end
Contemporaneous Documentation:	
Local file	Not later than four months after financial year end.
Master File	

b. Country-by-Country Reporting:

The Regulation has provisions dealing with country-by-country reporting. This is line with Action 13 of the BEPS project which seeks to enhance transparency for tax administration, taking into consideration the compliance costs for business. The new Regulations require that Country-by-Country (CbC) reports be filed for each fiscal year.

c. Safe Harbor Rules:

Safe harbour provisions have also been introduced in the Regulations which exempt related-party transactions from having to retain contemporaneous transfer pricing documentation, specifically a Local and a Master file, in the following situation:

- » Taxpayers who are parties to a controlled arrangement worth up to \$200,000

d. Business Restructuring

The new Regulations cover Business Restructuring as it was addressed in the OECD's guidelines on transfer pricing. The aim of this provision is to ensure that the payment made for any transfer of functions, rights, interests, assets, and risks between individuals in a controlled relationship reflects the amount an independent person in similar circumstances would pay.

A modern office interior with a long hallway on the left lined with large green plants and a glass-walled office area on the right containing desks with computers and monitors. The scene is lit with warm, recessed ceiling lights.

10.0

CORPORATE INCOME TAX

Corporate income Tax is a statutory tax obligation for every Company whether resident or non-resident in Ghana. The Tax is supposed to be paid at the end of the financial year of the company, assessing the chargeable profit from business operations.

In Ghana, the Corporate Income Tax is paid in instalments through self-assessment or by the company at the beginning of the financial year, withholding taxes on payments received business income and annual payment upon filing the annual tax return of the company.

The cumulation of instalment payment usually on quarterly basis and withholding tax (backed by withholding tax certificate) make up tax payment for the year prior to filing the annual tax return. At the point of filing the return, any shortfall in tax paid compared with the annual income tax payable is then paid to complete the payment for the year.

Conversely, the excess of tax paid over the annual tax payable in the annual income tax return would serve as a tax credit for the company. It must however be stated that this credit must be confirmed by the GRA through a Tax Audit or any other means deemed appropriate by the Commissioner-General.

10.1 Rate of Income Tax for Companies in Ghana

In Ghana, there are different types of tax rate applicable to companies. The applicable rate depends on the industry, location, type of business, and incentive being given under the tax laws. Below are the current corporate tax rates applicable to companies in different industries in Ghana:

	Tax rate	Category
Companies	25%	General
Companies	22%	Hotel
Company	8%	Export of non-traditional goods
Financial Institution	20%	Loans to Farming enterprise
/Manufacturing	75% of 25% = 18.75%	Located Regional Capital
- Manufacturing	50% of 25% = 15%	Located elsewhere other than Regional Capital
Free Zone Enterprise	Tax holiday	1st 10 years
	15%	Only Export after the tax holiday
	25%	Local sales after the tax holiday
- Petroleum, Mining Companies	35%	Extractive industry
- Financial institution	20%	Loans to Lease company for purchase of assets for Lease
Company – Agriculture	5% for ten years	Tree crops
	5% for five years	Cash crop and live stock other than Fish and Cattle
	5% for Ten year	Cattle
Company – Agro processing	5% for Five years	Agro processing conducted wholly in Ghana

Company – Cocoa by-product	5% for five years	Cocoa by-product business Conducted wholly in Ghana
Company – Rural bank	5% for 10 years	Rural Bank designated as such by the Banking Act, 2004, (Act 673)
Company – Waste Processing	5% for 7 years	Waste processing company
Company – Housing	5% for 5 years	Approved as a Low-cost housing company
Company – Approved Trustee/Mutual fund	5% for 10 years	Trustee/Mutual fund approved under Security Industry Act 1993 (PNDC 333)
Company – Venture Capital	5% for Ten years	Approved venture Capital

Financial sector recovery levy

Banks other than Rural and Community banks are obliged to pay a Financial Sector Recovery levy of 5%. This Levy is imposed on the profit before tax. The levy is not an allowable tax-deductible expense. The levy is expected to expire at the end of 2024 fiscal year, however, the Minister (for Finance) may at the end of the expiration review (extend) it.

10.2 Basis Period for companies

The accounting period of a company or trust is the accounting year of the company or trust. The Commissioner-General may, on application by a trust or company, approve a change of the accounting year of the trust or company on the terms and conditions that the Commissioner-General may approve. This approval may be revoked by the Commissioner General if the trust or company fails to comply with a condition attached to the approval.

The accounting year of the company or trust cannot be changed without the written approval of the Commissioner-General.

10.3 Allowable Deductions

Businesses are allowed to deduct expenses from income before charging the tax. Only expenses that are **Wholly, Exclusively and Necessarily** incurred in the production of the income.

Examples include business administrative expenses, capital allowance, losses carried over, repairs and improvement (within the cap), finance cost (within the cap), bad debt (upon meeting conditions), etc.

10.4 Non-allowable Deductions

In general, expenditures that are not Wholly, Exclusively, and Necessarily incurred towards generating the income are not allowed as deductible expenses. Expenditures of capital nature are also allowed as a deductible expense.

Examples of unallowable deductions include; provision for bad debt, repair, and improvement in excess of the allowable cap, private expenses of the board and business owners, members, penalties and interest for non-compliance with any regulatory requirement etc

10.5 Capital Allowance

In Capital allowances are granted to businesses who own depreciable assets and use those assets to generate income for the business.

The allowance granted is based of the class of assets. The basis of allowance is either reducing balance or straight-line method depending on the class of asset.

Class	Assets list	Rate In %	Basis/method of computation
1	Computers and data-handling equipment with peripheral devices	40	Reducing balance
2	Automobiles, trailers, construction and earth-moving equipment, plant and machinery used in manufacturing Plantation capital expenditure	30	Reducing balance
3	Railroad cars, Locomotives, water transportation equipment, aircraft, equipment and machinery, specialised public utility plant, office furniture and fixtures Equipment not included in another class	20	Reducing balance
4	Buildings, structures and works of a permanent nature	10	Straight-line
5	Intangible assets	Over the useful life.	

An importer or manufacturer of excisable goods shall be granted an accelerated depreciation of 50% capital allowance on machinery and equipment imported for the purpose of affixing excise tax stamps.

Capital expenditure on **petroleum operation** is granted capital allowance of 20% on the straight-line basis.

Capital expenditure on **mining and mineral operation** is granted capital allowance of 20% on the straight-line basis.

10.6 Carry over of losses

In Ghana, companies are allowed to carry over unrelieved losses for a period of 5 years. Thus, each financial year loss can be carried over for a period of five years and utilised to reduce/offset any income/profit that might be made in the subsequent year before applying the tax rate if any.

"unrelieved loss" means the amount of a loss that has not been deducted in calculating the income of the person.

10.6.1 Carry backwards of losses

In Ghana, carrying back unrelieved losses is allowed only in regard to long-term contracts.

The Law in Ghana permits unrelieved losses attributable to a long-term contract in the basis period in which the long-term contract is completed or an earlier basis period. This is allowed to be carried back and treated as an unrelieved loss of an earlier basis period.

10.7 Repairs and Improvement

Ordinarily, expenses incurred on repairs of an asset are allowed as deductible expense for tax purpose. However, in Ghana, the amount that is allowed for tax deductions is capped at 5% of the balance on assets in the pool that the asset belongs to. Thus, the deduction allowed in respect of repair and improvement of a particular asset shall not exceed five percent of the written down value of the applicable pool of that depreciable asset held at the end of the year.

The implication is that any excess expense on repair and improvement during the year shall be capitalised and amortised through capital allowance.

For example, where a company spends an amount \$20,000 on repair and improvement of a company vehicles. Should the written down value (WDV) in the pool of vehicle which is class 2 be at 80,000. Then, 5% of the WDV which is (5%*80,000) is \$8,000. From this scenario, although the company spent \$20,000 during the year in repairing the company vehicles, only \$4,000 shall be granted as allowable deductible expense. The balance of \$16,000 shall be capitalised and added to the pool in this class and capital allowance granted over the period at the rate of 30% as usual.

10.8 Financial cost

The Ghana Income Tax laws provide that; a company incurs financial cost when it incurs losses with respect to financial instrument, derivative or foreign currency instrument. For the purpose of financial cost tax deductible expense, it does not include interest expense.

The maximum amount of Financial cost allowed as deductible expense is limited to 50% of business income plus financial gains that the company realises during the year.

Any amount of financial cost that is not utilised during a particular year is allowed to be carried forward for the next five years until it is utilised.

10.9 Royalties

Royalty is interpreted by the Ghanaian Tax laws to include payment as consideration for the use of or right to use a copyright of literary, artistic or scientific work, including cinematograph films, **software** or video or audio recordings, whether the work is in electronic format or otherwise.

In Ghana, the rate for mineral royalty rate is 5% of the total revenue earned from minerals (excluding petroleum and water) obtained from mining operations by a holder of a mining lease, restricted mining lease or small-scale mining licence.

The general rate of for natural resources is 15%. However, the mining and petroleum industries are able to arrange for a special concession with the Government of Ghana.

10.10 Ring-fencing of financial institutions, petroleum and mineral operations

The principle of ring fencing in Ghana is that, affected entities must separate all their separate business operations for tax purposes. That is, if a bank for instance engages in a different non-banking activity, this bank is required to treat each business activity separately for tax purpose. The tax calculations for each operation must not be consolidated.

The chargeable income of affected businesses, i.e. financial institutions, petroleum or mineral operations is calculated separately for each financial service, petroleum right or mineral operation. For Petroleum business, "common processing unit" for separate operations can allow these separate operations to be treated as one operation for tax purposes.

The National Fiscal Stabilization Levy Act is repealed.

1. Despite the repeal of this Act, the Act Continues to apply for years of assessment commencing prior to the date on which this Act 1095 comes into force.
2. Any right, liability or obligation in existence immediately after the repeal of Act 892 shall remain in existence until the right, liability or obligation is exercised or terminated.

10.11 Growth and Stability levy

The growth and sustainability levy Act (2023) Act 1095, which repeals the National Fiscal Stabilization Levy Act 2013 (Act 862) and i imposes a percentage of profit before tax or a percentage of gross production for companies specified in the second column of the schedule and institution specified in the first column of the Schedule.

Levy payable under this new Act is not an allowable deduction for the purpose of ascertaining the income a person under the income tax act and is payable with respect to profit before tax or production for 2023, 2024 and 2025 years of assessment.

This levy imposed applies to specified companies and institutions despite any provisions to the contrary in any arrangement or enactment relating to tax holiday or exemption form direct or indirect tax applicable to a company or institution.

A person who is subject to the levy shall file with the commission general by the date of payment of the first tax installment, an estimate of Levy payable for the year of assessment.

An estimate of the levy payable for the year of assessment shall, subject to any directions of the Commissioner-General to the contrary,

- a. Be in the prescribed form; and
- b. Provide any other information that the Commissioner General may require.

The levy assessed for a year of assessment is payable quarterly and is due on 31st March, 30th September and 31st December of the year. All the amounts collected as the levies will be paid into the consolidated by the Commissioner General.

he Provisions of the revenue administration Act, relating to collection, enforcement, penalties and offences shall apply to the collection of the levy as if the levy is collected under Act 915.

A company or institution specified in the first column of the Schedule shall file a return in respect of the Levy with the Commissioner General in the manner and at the time and place determined by the Commissioner-General.

The Minister may, by legislative instrument, make Regulation to amend the schedule to revise:

- Rate of the levy
- The categories of companies and institutions liable to pay the levy
- The companies and institutions liable to pay the levy

The Category of companies are applicable rates are set out in the table below below:

CATEGORY	RATE OF LEVY
<p>Category A</p> <p>1. Banks</p> <p>2. Non-Bank Financial Institutions</p> <p>3. Insurance companies</p> <p>4. Telecommunications companies liable to collect and pay the Communications Service Tax under the Communications Service Tax Act, 2008 (Act 754)</p> <p>5. Breweries</p> <p>6. Inspection and realization companies</p> <p>7. Companies providing mining support services</p> <p>8. Bulk Oil Distributors</p> <p>9. Oil Marketing Companies</p> <p>10. Communication Tower Operators</p> <p>11. Companies providing upstream petroleum services</p> <p>12. Companies and institutions registered by the Securities and Exchange Commission</p> <p>13. Specialized Deposit-Taking Institutions</p> <p>14. Electronic Money Issuers</p> <p>15. Shipping lines, maritime and airport terminals</p>	<p>5% of Profit Before Tax</p>
<p>Category B</p> <p>Mining companies and upstream oil and gas companies</p>	<p>1% of gross production</p>
<p>Category C</p> <p>All other entities not falling within Category A or Category B</p>	<p>2.5% of profit before tax</p>

Impliedly, all companies are required to file a return of Growth and Stability Levy and make a quarterly payment just as the self-assessment tax instalment payment.

10.12 Gifts received by entities.

In Ghana, any gift received by a company with respect to a business operation or an investment is included in the normal assessable income of the entity and taxed at the rate applicable to the entity.

10.13 Telecommunications and transportation business

Payments received by a person who carries on a business of transmitting or receiving messages by cable, radio, optical fibre or satellite or electronic communication from an apparatus located in Ghana, whether or not the messages originate, terminate or are used in Ghana, are liable to a withholding tax rate of 15%.

Similarly, payments received by a person who conducts a business of carrying passengers, cargo, mail or other movable assets that are embarked in Ghana (other than transshipment), including the rental of containers and

related equipment that are incidental or supplementary to the transportation business, are liable to a withholding tax rate of 15%. For a non-resident entity, the withholding tax is treated as a final tax.

10.14 Change in control of business

Where the underlying ownership of an entity changes by more than fifty percent at any time within a period of three years, the assets and liabilities of that entity immediately before the change is deemed to be realized.

Where there is such change in ownership, the entity shall not be allowed to deduct financial costs, losses and bad debts incurred before the change in ownership.

Where a change in ownership occurs during a year of assessment, both the period before and after the change shall be treated as separate years of assessment.

In determining the income for a business, the gain from realisation is included and taxed at the company's rate.

10.15 Taxation of shareholders

In Ghana, where a resident company pays dividend to another resident company, the dividend is exempted from tax provided the company that received the dividend controls indirectly or directly, at least twenty-five percent of the voting right of the company which paid the dividend.

Both the dividend paid by a non-resident company and any gain made on the disposal of the shares, where a shareholder disposes of shares in a company summed up to arrive at the income of the shareholder for tax purposes.

Where the company capitalises profit without declaring dividend, dividend may be deemed to have been distributed to each shareholder in the proportion of their interest in the company. The Commissioner- General under certain conditions is allowed to allocate certain amount of undistributed profit as dividends and taxes applied thereof.

10.16 Company Tax Returns and Tax and payment

Returns

Type of Return	Deadline
Company Self-Assessment	Three (3) months after the end of the previous financial year. i.e, 31 March if the financial year is 31 December
Corporate Income tax return (CIT) & Transfer Pricing return	Four (4) months after the end of the current financial year. i.e 30 April if the financial year is 31 December
Withholding Tax return	15th after the month in which the deduction was made. i.e 15th April for deductions made in month of March
Annual Employer Deduction Summary	Four (4) months after the end of the current financial year. i.e 30 April if the financial year is 31 December
PAYE Return	15th after the month in which the deduction was made. i.e 15th April for deductions made in month of March
Personal Income Tax Return	By the last working day of April after the end of the year to which the return relates. i.e, return for the year 2019 is due by 30 April 2020

Payment of taxes

Generally, tax payment is due at the date that the filing of the return is due. Tax instalment payment arising from self-assessment or provisional assessment by the GRA is due on quarterly basis. Thus, the first quarter payment is due by end of March, second quarter is by end of June, third quarter by end of September and fourth quarter by the end of December.

Due dates for other taxes such as penalties and interest are being communicated through the letter of assessment.

In line with the Revenue Administration Act of Ghana, a person can seek for an extension of time to payment for tax subject to conditions.

Offenses and Penalties

Type of offense	Interest and penalties
Failure to maintain Records	Where the failure is deliberate or reckless, 75% of the tax attributable to that period; or In any other case, the lesser of the 75% of the tax, and GHS 250.
Failure to furnish Return of income on due date	GHS500 plus; GHS 4 in the case of entities for each day Or GHS 2 in the case of an individual for each day of default

Failure to pay tax on the due date	Interest of 125% of the statutory rate, compounded monthly, on the amount of tax outstanding at the start of the period
Understating estimated tax payable by instalment	Interest of 125% of statutory rate compounding monthly on the difference between the total instalments paid and 90% of the actual income tax for the year. This penalty applies where the chargeable income estimate is less than 90% of the actual.
Providing false or misleading statement	<p>A fine of double of tax underpayment where the omission or statement is made without a reasonable excuse.</p> <p>In any other case, a fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than one month and not more than three months, or both the fine and imprisonment</p> <p>The fine go go to triple of tax underpayment where the where the statement or omission is made knowingly or recklessly or to a fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than six months and not more than one year, or both the fine and imprisonment, in any other case</p>
Failure to pay tax	<p>Where the amount involved is in excess of GHS 2000, the person is liable on summary conviction to a fine of not less than GHS 2400 and not more than GHS 12000 or imprisonment for a term of not less than three months and not more than one year, or both; and</p> <p>In any other case, to a fine of not less than GHS 600 and not more than GHS 2400 or imprisonment for a term of not less than one month and not more than three months, or both.</p>
Impeding tax administration	A fine of not less than GHS 1200 and not more than GHS 12,000 or to a term of imprisonment of not less than six months and not more than two years, or both the fine and the imprisonment.



11.0

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VALUE ADDED
TAX (VAT)

11.1 Value Added Tax, National Health Insurance Levy, Ghana Education Trust Fund Levy and Covid-19 Health Levy (VAT, NHIL, GETFL & Covid-19 levy)

In Ghana, VAT, NHIL, GETFL & Covid 19 levy are charged on the supply of goods and services and import of goods and services. In general, the tax is borne by the recipient of the goods or services. Thus, the person liable to pay VAT, NHIL, GETFL & Covid 19 levy is in the case of a taxable supply, by the taxable person making the supply; in the case of an import of goods, by the importer; or in the case of an import of services, by the recipient of the service. In the case of a non-resident person who provides telecommunication services or electronic commerce and is required to register for VAT, the non-resident is liable for the payment of the tax.

The VAT is charged by a taxable person on the supply of a taxable activity. In Ghana, a taxable person is a person who is required to register for VAT as required by the VAT Act 2013, Act 870.

Taxable activity on the other hand is an activity that is carried on by a person in the country, or partly in the country, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to another person for consideration. It includes;

- a. an activity of a local authority or unincorporated association or body that involves, in whole or in part, the supply of goods or services to another person for consideration;
- b. the processing of data or supply of information or similar service;
- c. the supply of staff;
- d. the acceptance of a wager or stake in any form of betting or gaming, gaming machines;
- e. the making of gifts or loans of goods;
- f. the leasing or letting of goods on hire;
- g. the appropriation of goods or services for personal use or consumption by the taxable person or by any other person;
- h. the sale, transfer, assignment or licensing of patents, copyrights, trademarks, computer software and other proprietary information; and
- i. the export of non-traditional products.

11.2 Rate of VAT, NHIL & GETFL & Covid-19 Levy

There are some supplies that are Zero-rated. . Thus, the rate of VAT is zero. Retailers who make taxable supplies of not less than GHS 200,000 but not more than GHS 500,000, at the end of any period of twelve months are charged a flat rate of 3%. With the exceptions above, the standard rate is 15% for VAT, 2.5% for NHIL, 2.5% for GETFL and 1% for Covid 19 levy. Note that the calculation of the VAT is on the summation of the NHIL, GETFL, Covid-19 levy and the original cost of the item.

11.3 Registration Requirements for VAT

Under the VAT laws of Ghana, a person who is engaged in the supply of taxable activity is required to register for VAT if;

- a. at the end of any period of twelve or less months, the person made, during that period, taxable supplies exceeding two hundred thousand Ghana Cedis; or
- b. at the end of any month, there are reasonable grounds to expect that that person will make taxable supplies in the next twelve or less months exceeding two hundred thousand Ghana Cedis.

Despite the criteria above, a person may still register for VAT if;

- a. at the end of any period of three months, the person made, during that period, taxable supplies exceeding fifty thousand Ghana Cedis; and
- b. there are reasonable grounds to expect that the total value of taxable supplies made by that person during that period and to be made during the next consecutive nine months will exceed two hundred thousand Ghana Cedis.

Where a person is required to register for VAT but is not registered, that person is considered a taxable person in Ghana and required to meet all the obligations under the law.

Other persons such as auctioneers, and entertainment promoters are required to register for VAT irrespective of the threshold before the activity is carried out.

An auctioneer shall apply for registration within thirty days after the date on which that person becomes an auctioneer.

A promoter of public entertainment, shall apply for registration at least forty-eight hours before the commencement of the public entertainment, if, within any period of twelve or less months that includes the date of the public entertainment to which the application relates, the total value of taxable supplies of the promoter or the licensee or proprietor is reasonably expected to exceed ten thousand Ghana Cedis

11.4 Unregistered, non-resident persons who provide telecommunication services or electronic commerce

An Unregistered, non-resident person who provides telecommunication services or electronic commerce to persons for use in the country, unless the service is provided through a Value Added Tax registered agent, is required to register if that person makes taxable supplies.

Now, there is an imposition of restriction of access in the country by a person who fails to register for VAT as provided above until the person fulfills the obligation under the Act and Regulation. Digital Services which was hitherto not included in the Act, has now been included. Digital Service has been defined to include social networking, online gaming, cloud services, video or audio streaming, digital marketplace operations and online advertisement services.

A non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent are required to register for VAT shall not qualify for deductible input tax for the supply of a digital service.

A non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent shall:

- submit a return to the Commissioner General, not later than the last day of the month immediately following the month to which the return relates, whether or not tax is payable for the period; and
- pay the tax due to the Commissioner General on the same day that the return is due

11.5 Group registration for VAT

Group of persons may subject to the approval of the Commissioner-General, register for VAT as a singly taxable person. Where the registration is permitted, each member of the members is jointly and severally liable for any liability or contravention under this Tax law of the country.

Alternatively, a taxable person whose taxable activity is structured into distinct divisions may apply to the Commissioner-General to register one or more of its divisions for tax purposes.

11.6 Mixed supplies

A supply of services incidental to a supply of goods is part of the supply of goods. The supply of goods incidental to a supply of services is part of the supply of services. Again, the supply of services incidental to an import of goods is part of the import of the goods.

11.7 Exempt supply

In Ghana, the supply of some goods are marked as exempt and not taxable. The full list is provided in the first schedule of the VAT Act 2013, Act 870. Some are below;

Agricultural inputs; Water, excluding bottled or packaged water; Electricity within specified limits; Textbooks, approved supplementary readers, newspapers, atlases, charts, maps and music; Education services, and laboratory and library equipment for use in rendering such services; Medical services and medical supplies; Certain pharmaceuticals, active ingredients and selected inputs; Domestic transportation; Machinery and parts of machinery designed for use in certain activities; Crude oil and hydrocarbon products; Accommodation in a dwelling, or land for agricultural use and civil engineering public works; Goods specifically designed for the disabled; and Financial Services.

The supply of locally manufactured textiles has been included in the zero-rated supply of goods for a period of two years up to 31 December 2023.

The supply of locally manufactured sanitary towels has been included in the second schedule as a zero-rated supply. This will mean that VAT on locally manufactured towels will be at zero rate (0%).

There is the waiver of Value Added Tax on the importation of electric vehicles purposely for public transportation. There is also an extension of zero rate tax on locally assembled vehicles under the Ghana Automotive Development Programme up to 31 December 2025,

11.8 Recover of VAT, NHIL and GETFL incurred (Input VAT)

In Ghana, the 2.5% NHIL, 2.5% GETFL and 1% Covid-19 Levy are levies and not recoverable by the taxable person. However, the 15% VAT is recoverable by the taxable person. The amount incurred can be applied for from the commissioner-General within a period of six months. It can also be recovered by offsetting the amount incurred from VAT collected on behalf of

the Commissioner-General through VAT invoices issued to customers. Any excess amount not recovered through the Input-Output VAT set-off can be applied for from the Commissioner-General subject to conditions met.

11.9 Withholding of VAT

The Withholding VAT system is where part of the VAT amount payable by the debtor/customer is withheld and paid directly to the GRA. In Ghana, the Commissioner-General has gazetted some persons as agents to implement the Scheme. The rate of Withholding is 7% of the taxable output value for VAT purposes, i.e. the taxable value inclusive of NHIL and GETFL, and issue a Withholding VAT Credit Certificate when the payment is being made.

11.10 Withholding of VAT

Importers of taxable goods who are not registered for tax are liable to upfront payment of 15% of the custom value of the taxable goods as penalty. The law further provides that the upfront payment may be recovered after the person has registered for the tax and filed a return.

11.11 Certified Invoicing System (E-VAT)

Value Added Tax (amendment) Act 2022 (Act 1082) requires a taxable person to issue a tax invoice through a certified invoicing system and ensure that the Certified Invoicing System is integrated into the invoicing system of the C-G. Currently, the implementation of the integration processes is still being carried out by GRA.

Furtherance to this, Act 1087 has been passed to prescribe penalty for VAT registered persons that don't adhere to the new provisions of Act 1082. Persons who issue a falsified tax invoice or sales receipt or manipulate the proper functioning of the Certified Invoicing System or fail to integrate the Certified Invoicing System into the invoicing system of the Commissioner-General will, in addition to penalty prescribed for failure to issue a tax invoice under the VAT Act, be liable to a penalty of the higher of GHS50,000 or three times the amount of tax involved.

11.12 Betting and Game of Chance

Betting, Gaming (including other games of chance) have been removed from the scope of VAT application. Thus, exempted from VAT.

11.13 Import of textbooks, newspapers periodicals, etc.

Currently, VAT is applicable on imported textbooks, exercise books, newspapers, architectural plans and similar plans, drawings, scientific and technical works, periodicals, magazines, trade catalogue, price lists, greeting cards, almanacs, calendars, diaries and stationery and other printed materials have been reintroduced. VAT was not applicable on these goods. However, it has been reintroduced effective January 2023. VAT is now applicable on importation of textbooks, exercise books and other printed materials.

11.14 Flat rate for Immovable Property

There is also an introduction of a flat rate of five percent for the rental of commercial premises together with sale of immovable property by an estate developer. By the same token, estate developers who charge the flat rate of VAT will not be allowed deduction of input VAT. The definition of an Estate Developer has been extended to mean a commercial establishment of an individual engaged in the business of construction or renovation and supply of immovable property.

11.15 VAT Refund

In Ghana, taxable persons can apply for a refund of VAT credit after satisfying the condition set out below;

where the credit for the excess amount remains outstanding for a continuous period of 3 months or more, except that where the Commissioner – General orders an audit of the claim for refund, the application shall be treated as received on the date that the audit is concluded.

11.16 VAT Returns

VAT, NHIL, GETFL and Covid-19 Levy are due by the last working day of the month after the month to which the return relates. VAT, NHIL, GETFL and Covid-19 Levy on imported goods are paid alongside the payment for the associated Duties when the goods are being cleared.

Imported Services – VAT, NHIL, GETFL and Covid-19 Levy on imported services are filed and paid within 21 days after the month in which the service was imported.

VAT withholding tax returns are filed and paid by the 15th day after the month in which the VAT was withheld.

The following are the offences associated with VAT and their respective applicable penalties.

Offense	Penalty
Failure to register for Tax	Up to twice the amount of tax on taxable supplies until the application is filed for registration
Failure to issue Tax invoice	Up to GHS1,200 plus the higher of GHS500 and triple of the tax involved
Late filing of return	GHS500 plus GHS10 each day the return remains unfiled
Failure to pay tax on due date, Tax	125% of the statutory (BoG) rate compounding monthly on the outstanding amount
Providing false or misleading statement	Up to 100% of the tax shortfall depending on the reasonability of the excuse
Issue of a falsified tax invoice or sales receipt or manipulate the proper functioning of the Certified Invoicing System, or fail to integrate the Certified Invoicing System into the invoicing system	In addition to penalty prescribed for failure to issue a tax invoice under the VAT Act, be liable to a penalty of the higher of GHS50,000 or three times the amount of tax involved

12.0

OTHER TAXES

12.1 Withholding Tax

12.1.1 WHT Rates Applicable to Resident Individuals

Type of Payment	Rate (%)
Dividend	8
Rent (Residential premises)	8
Rent (non-residential premises)	15
Interest (to an individual)	1
Interest (excluding individual and financial institution)	8
Supply of Goods	3
Supply of Services	7.5
Provision of works	5
Fees, emoluments to director, manager, trustee or board member of a company or body of persons	20
Examining, invigilating, supervising an examination, or part time teaching or lecturing;	10
Commission to insurance, sales and canvassing agents	10
commission to a sales agent;	10
commission to a resident lotto receiver or agent	10
Endorsement Fees	10
Lottery winning	10%
Royalty	15%
Unprocessed precious mineral	1.5%

With regards to payment for goods and services to non-residents (excluding Permanent Establishments), the resident person is required to inform the Commissioner-General of the relevant details of the transaction within thirty days of entering into the contract. The CG shall determine whether to subject the payment involved to withholding tax and, if so, whether to impose the tax on the entire amount or on a portion of the amount. Tax withheld from payments to non-residents is a final tax.

12.1.2 Withholding Tax Rates Applicable to Non-Resident Individuals

Type of payment	Rate (%)
Dividend	8
Interest	8
Royalties, Natural Resources and Rents (equipment)	15
Supply of Goods & Provision of Services	20
Shipping, Air Transportation and Communication	15
Management and Technical Service	20
Endorsement Fees	10
Insurance Premium for short-term Insurance	5
Employment income	25
Branch profit being repatriated	8

A person who withholds tax from any payment is required to file monthly withholding tax returns and remit the taxes withheld to the Ghana Revenue Authority by the 15th of the month following the one in which the deduction is made.

Failure to do so, attracts a surcharge of the Tax involved with an additional interest of 125% of the statutory rate (BoG interest rate) compounding monthly. For instance, where the amount of tax withheld is GHS100. In a case of default, the GRA will charge an interest of at the rate of 125% of the BoG interest rate and this interest by the GRA compounds monthly that the default continuous. If the BoG rate is 15%, then the GRA rate that would be applied is $125% \times 15% = 18.75%$ compounding monthly.

12.2 Special Petroleum tax

Oil marketing companies (OMCs) are required to charge a Special Petroleum Tax at the at the specific rate of tax per litre or kilogramme corresponding to each of the petroleum products provided in the Special Petroleum Tax (Amendment) Act 2018 (ACT965). The petroleum products listed in the schedule include as follows;

- i. petrol
- ii. diesel
- iii. kerosene
- iv. Liquefied Petroleum Gas (LPG) and
- v. Natural Petroleum Gas (NPG).

They include petrol, diesel, liquefied petroleum gas, natural petroleum gas and kerosene.

Return for this tax is submitted and paid to Domestic Tax Revenue Division of GRA in line with VAT which is the last working day of the month following the month in which the transaction took place.

12.3 Special Rate of Tax on Income from Lottery Operations

The income of a person from lottery operations is subject to tax at the rate of (20%) twenty percent on the gross gaming revenue. The chargeable income of a person from lottery operations is the Gross Gaming Revenue (GGR).

The Gross Gaming Revenue is the total amount staked or wagered less prizes or Gross winnings paid or payable. Where a person has chargeable income other than income from lottery operations, the person shall be charged separately in accordance with imposition of income tax.

Operators required to pay tax on gross gaming revenue include;

- i. Private lotto operators
- ii. Sports betting operators
- iii. Casino operators
- iv. Route operators
- v. Remote interactive games operators
- vi. Other games of chance operators

12.3.1 Filing and Payment of Gross Gaming Revenue

The tax on gross gaming revenue is due for payment at the same time as the due date for filing the return. The return is due by the 15th day of the month following the month in which the gross gaming revenue return relates. At the end of each year, all persons engaged in lottery

operation are required to file annual GGR tax returns and pay any tax outstanding. The annual return and any tax payable are due not later than four months after the end of the basis period in accordance with section 124 of the Act.

In the event where Ghana Revenue Authority (GRA) ascertain that the total amount of GGR tax payment made for the year is less than the total monthly GGR tax liability for that year, GRA will issue an assessment notice (including interest and penalties as applicable) on the difference to the lottery operator for payment. On the other hand, where the total amount of payment made by the lottery operator for the year exceeds the GGR tax liability due, the operator will be allowed to take credit on the excess payment in the month(s) following the determination. The lottery operator will be subject to tax at the rate of 20% on the GGR. The lottery operator is required to Withhold a tax at the rate of 10% on the winning by the players.

12.4 Communication Service Tax

In Ghana, Communication Service tax is a form of consumption tax paid by users of Electronic Communication Services. Providers of Electronic Communication Services (ECS) are required to charge VAT of 5% on services provided to customers and in turn pay all the CST collected to the Domestic Tax Revenue Division (DTRD) of GRA. The due date for filing CST monthly return is the last working day of the month following the month to which the tax return and payment relate unless the Commissioner-General otherwise directs.

The return for the tax collected is again due on the last working day of the month following the month in which the transaction occurred.

Penalty of GHS2,000 and GHS500 for each day the return remains unfiled is charged for late filing of return. Penalty for late payment coincides with the general penalty which is 125% of statutory rate compounding month on the outstanding tax liability.

12.5 Customs and excise taxes

In Ghana, Excise Tax Stamp Act, 2013 (Act 873) makes it mandatory for all qualifying excisable products that are imported or locally manufactured are required to be affixed with tax stamps specified and supplied by the GRA before they are delivered ex-factory, cleared from any port of entry into Ghana, or sold in the local market. Some of the affected goods include; bottled water, non-alcoholic drinks, alcoholic drinks, textiles etc and any other product that may be prescribed by the Minister for Finance.

Customs and excise duties are imposed on the importation of goods at the port of entry and some goods manufactured in the country. Excisable goods are taxed at different rates.

Per The Excise Duty (Amendment) Act, 2023 (Act 1093), the following are the new applicable excisable rate;

Commodity Description	New Rate of Duty
(i) mineral water	20 per centum of the ex-factory price
(ii) aerated water	
(iii) non-alcoholic beer	
(iv) energy drinks	
(v) Other non-alcoholic drinks	
Distilled, bottled water	17.5 per centum of the ex-factory price
Sachet water	0 per centum of the ex-factory price
Fruit juices, including grape and vegetable juices, unfermented and not containing added spirits whether or not containing added sugar or other sweetening matter falling under heading 20.09 of the Harmonised System and Custom Tariff Schedules, 2017:	20 per centum of the ex-factory price
Malt drink: Percentage use of local raw material	
(a) Less than 50 per centum of local raw material	20 per centum of the ex-factory price
(b) 50 per centum to 70 per centum of local raw material	12.5 per centum of the ex-factory price
(c) Above 70 per centum of local raw material	10 per centum of the ex-factory price
Beer, stout other than indigenous beer:	
Percentage use of local raw material	
(a) Less than 50 per centum of local raw material	47.5 per centum of the ex-factory price
(b) 50 per centum to 70 per centum of local raw material	32.5 per centum of the ex-factory price
(c) Above 70 per centum of local raw material	10 per centum of the ex-factory price
Cider beer	47.5 per centum of the ex-factory price
Wines, including sparkling wine	45 per centum of the ex-factory price
Spirits including "Akpeteshie"	
(a) Distilled or rectified	50 per centum of the ex-factory price
(b) Blended or compounded	50 per centum of the ex-factory price
(c) Other:	
(i) Denatured to the satisfaction of the Commissioner-General	10 per centum of the ex-factory price
(ii) For use solely in the laboratories or in the compounding of drugs	0 per centum
(iii) "Akpeteshie"	20 per centum of the ex-factory price
Tobacco Products:	
(a) Cigarette	50 per centum of the ex-factory price and a specific duty of 28 pesewas per stick
(b) Cigars	50 per centum of the ex-factory price and a specific duty of 28 pesewas per stick

(c) Negrohead	GHS 280 per kilogram
(d) Snuff and other tobacco	GHS 280 per kilogram
(e) Electronic cigarette liquids falling under heading 24.03 of the Harmonized System and Custom Tariff Schedules, 2022	50 per centum of the ex-factory price and a specific duty of 50 pesewas per millilitre
(f) Electronic cigarettes and similar personal electric vaporizing devices falling under heading 85.43 of the Harmonized System and Custom Tariff Schedules, 2017:	
(i) Electronic cigarettes	50 per centum of the ex-factory price
(ii) Electronic smoking devices	50 per centum of the ex-factory price
Plastic and Plastic products listed under chapters 39 and 63 of the Harmonised System and Custom Tariff Schedules, 2012	5 per centum of the ex-factory price
Other products	
Textiles	0 per centum
Pharmaceuticals	0 per centum

12.5.1 Import duties

There are a couple of duties paid at the port of entry of Ghana. The rate varies depending on the type of product being imported and penalties attached to it. Import duties is normally applied on the Cost, Insurance and Freight (CIF). Separately, NHIL of 2.5%, GETFL of 2.5%, Covid 19 Levy of 1% and VAT of 15% are all applied on the CIF alongside the import duty. Under the ECOWAS Common External Tariffs, Ghana now operates Five (5) -Band Tax Rates as follows;

- Zero (0) Rated – Essential Social Goods
- 5% – Basic necessities, basic raw materials, Capital Goods, Specific Inputs
- 10% – Inputs and Intermediary Products (Semi-Finished Goods)
- 20% – Finished Goods (final Consumer goods)
- 35% – Specific goods for Economic Development

12.5.2 Other duties at the port:

The above enumerated tax rates are not in respect of Import Duty only; they are also an imposition of the following;

Levies/ Charges	Applicable Rate
Special import levy	2%
ECOWAS levy	0.5%
African Union import levy	0.2%
Export and Import Levy (EXIM)	0.75%
Administrative charges	0.4 – 3.45%
Advance Eco levy	In accordance with HSC
Airport tax	GHS5 local travel, \$60 – \$200 for foreign travel

The GRA has implemented a reversal of 50% on the reduction of values of imports on selected items, otherwise known as the benchmark values.

The reversal will affect selected items from all the three categories on which the reversal was applied. These are:

- a. The home delivery value of vehicles;
- b. Goods on which benchmark values are applied;
- c. All other goods.

12.6 Electronic Transfer Levy

The enactment of the Electronic Transfer Levy Act, 2022 (Act 1075), has reviewed downwards, the electronic transfer levy from 1.5% to 1%. A 1% levy is charged on all cumulative daily electronic transfer exceeding GHC100.00. The Levy is charged on electronic transfer at the time of transfer by the entities provided below;

- Electronic Money Issuers
- Payment Service Providers
- Banks
- Specialized Deposit – Taking Institutions
- Other Financial Institutions prescribed by regulations made under the Act.

The transfers that fall under E Levy include the following;

- Mobile money transfers done between wallets on the same electronic money issuer.
- Transfers from a wallet on one electronic money issuer to a recipient on another electronic money issuer.
- Transfers from bank accounts to mobile money wallets.
- Transfers from mobile money wallets to bank accounts.
- Bank transfers on an instant pay digital platform or application which originates from a bank account belonging to an individual.

The following transactions are however exempted from the E levy;

- A cumulative transfer of GHS100.00 a day threshold made by the same person
- A transfer between accounts owned by the same person
- A transfer for the payment of taxes, fee and charges on the Ghana.Gov system or any other Government of Ghana designated payment system
- Specified merchant payments.
- Transfers between principal, agent and master-agent accounts; and
- Electronic clearing of cheques

12.7 Emissions Levy

The enactment of Emissions Levy Act, 2023 (Act 1112), has introduced the imposition of Emissions Levy charged on specified sectors and internal combustion engine vehicle emissions.

Persons required to pay the Emissions Levy are categorized into two namely;



- i. Persons in the sectors of construction, manufacturing, mining, oil and gas, electricity and heating; and
- ii. Owners of Motor Vehicles.

The levy for entities in the specified sectors is based on the sum of greenhouse gas emission by a person expressed as carbon dioxide equivalent of those greenhouse emission per month. The levy for motor vehicle is at a flat rate ranging from GHC 75.00 – GHC300.00 on the size of the engine capacity.

Assessment of the Levy Payable

The Commissioner General in collaboration with the relevant Government Agency is responsible for assessment of the Levy imposed.

Returns to be filed and the due date for filing them under this new Act.

- i. Annual Estimate of Levy Payable – By the end of the first month of the year.
- ii. Monthly quantity of Emission returns- By the end of the month immediately following the month to which the assessment relates.
- iii. Levy payable returns- By the end of the month immediately following the month to which the assessment relates. Only this return is payable.

A person who is subject to the payment of the levy on a motor will pay the levy to the Ghana Revenue Authority on or before the date for the renewal of a road use certificate.

A person obligated to issue a road use certificate is required to demand evidence of payment of the levy before the issue of the road use certificate.

12.8 Growth and Sustainability Levy

The Growth and Sustainability Levy (the "Levy") is a levy imposed on profit and gross production of Companies. The levy is imposed based on the category of industry that a company operates in. For some industries, the levy is imposed on profit before tax whilst for others, it is imposed on the gross production during the year of assessment.

Persons liable to pay the Levy

The Levy applies to all institutions specified in the schedule of the Act. However, specific stability clauses in an agreement with Government and exemptions granted to a company may exclude the company from paying the levy.

There are currently no regulations. However, the Minister (of Finance) is empowered to, by a Legislative Instrument, make Regulations to amend the schedule to revise the following;

- a. The categories of companies and institutions liable to pay the Levy;
 - b. The companies and institutions liable to pay the Levy; and
 - c. The rate of the Levy.
- The Levy is payable as a percentage of profits before tax or production for 2023, 2024, and 2025 years of assessment. Companies in Category A will be required to pay a Levy of 5% of their profits before tax. Category B companies will pay a Levy of 1% of their gross production. All other entities that do not fall within Category A and B will be required to pay a Levy of 2.5% of their profit before tax.

Categories of companies

Companies subject to this Levy are categorized as follows;

CATEGORY	RATE OF LEVY
Category A	
<ul style="list-style-type: none"> ▪ Banks ▪ Non-Bank Financial Institutions ▪ Insurance Companies ▪ Telecommunication Companies that are liable to collect and pay the Communication Service Tax ▪ Breweries ▪ Inspection and Valuation companies ▪ Companies providing mining support services. ▪ Bulk Oil Distributors ▪ Oil Marketing Companies ▪ Communication Tower Operators ▪ Companies providing upstream petroleum services. ▪ Companies and Institutions registered by the Securities and Exchange Commission ▪ Special Deposit-Taking Institution ▪ Electronic Money Issuers ▪ Shipping Lines, maritime and airport terminals 	5% of Profit Before Tax
Category B	
Mining companies and upstream oil and gas companies	1% of gross production
Category C	
All other entities not within Category A and Category B	2.5% of profit before tax

Basically, every company is affected by the Levy. The only difference is that the applicable rates vary amongst the various categories of industries.

Deductibility of the levy from profit

The Levy paid or payable is not an allowable deduction when a person is ascertaining chargeable income for a year assessment under the Income Tax Act, 2015(Act 896) as amended.

The due date to file an assessment and pay the Levy

- A person who is subject to the Levy for a year of assessment shall file with the Commissioner-General, an estimate of the Levy payable for the year of assessment by the date of payment of the first tax installment.
- Subject to any directives of the Commissioner-General to the contrary;
- An estimate of the Levy shall be in the prescribed form and provide any other information that the Commissioner-General may require.
- The Levy assessed for a year of assessment is payable quarterly and due on the 31st of March, 30th of June, 30th of September, and 31st of December of the year.

Filing of returns

The specified companies and institutions are required to file a return in respect of the Levy with the Commissioner-General in the manner and at the time and place as determined by the Commissioner-General.





13.0

DATA
PROTECTION
ACT

Data processing is simply converting data into a usable and desired form. Data processing is described generally as the collection and manipulation of items of data to produce meaningful information.

In Ghana, data processing is governed by the Data Protection Act, 2012 Act 843. The main objective of the Act is to establish a Data Protection Commission, to protect the privacy of the individual and personal data by regulating the processing of personal information, to provide the process to obtain, hold, use, or disclose personal information and for related matters.

13.1 Data Principles and Right of Privacy

A data controller or data processor has the responsibility of processing personal or operational data of a data subject. Every data subject essentially has a right of privacy thus the Act specifies data principles which are to be applied by data controllers and processors in processing the personal data of data subjects.⁷¹ These principles include accountability, lawfulness of processing, specification of purpose, compatibility of further processing with purpose of collection, quality of information, openness, data security safeguards and data subject participation.

A data controller or processor is mandated to ensure that personal data is processed without infringing the privacy rights of the data subject and that the processing is done in a lawful and responsible manner. In regard to foreign data subjects, processing must be in compliance with the data protection legislation of the foreign jurisdiction where the personal data of the data subject originates.⁷²

13.2 Purposes for Processing of Personal Data

The law requires that the purpose for processing personal data must be necessary, relevant, and not excessive.⁷³ In general, the prior consent of the data subject must be obtained before personal data is processed.⁷⁴ However, there are a few exceptions to this requirement where the processing is:

- necessary for the purpose of a contract to which the data subject is a party
- authorised or required by law
- to protect a legitimate interest of the data subject
- necessary for the proper performance of a statutory duty
- to pursue the legitimate interest of the controller or processor to whom the data is supplied.

13.3 Right of Objection

A data subject has the right to object to the processing of personal data and once an objection is made, the person processing the personal data shall stop processing.

71 Section 17 of Ghana's Data Protection Act

72 Section 18 of Ghana's Data Protection Act

73 Section 19 of Ghana's Data Protection Act

74 Section 20 of Ghana's Data Protection Act

13.4 Collection of Personal Data

Personal data could be collected directly from the data subject or indirectly⁷⁵ where.

- the data is contained in a public record or the data subject has made the data public
- the data subject has consented to the collection from another source and such collection is not likely to prejudice a legitimate interest of the data subject
- collection is for the prevention, detection, investigation, prosecution or punishment of an offence or breach of law
- collection is for the enforcement of a law which imposes a pecuniary penalty or concerns revenue collection
- for the conduct of proceedings before any court or tribunal
- collection is for protection of national security
- it is for the protection of the interests of a responsible or third party to whom the information is supplied
- compliance would prejudice a lawful purpose for the collection or compliance or not reasonably practicable.

A data subject must be informed that personal data is being collected and the purpose for which the data is being collected. The purpose for collection must be explicitly defined, lawful and related to the activity of the person collecting the data.⁷⁶

13.5 Retention of Personal Data

A data controller is required to retain personal data for the period necessary to achieve the purpose for which the data was collected and processed.⁷⁷ However, the Act allows for circumstances where retention is not limited to a specified period and the time for retention could be extended, that is, where the retention is authorized by law; reasonably necessary for a lawful purpose related to a function or activity; required by virtue of a contract between parties; or the data subject consents to the retention of the record.

The Act provides no time limits or specific period for the retention of records of personal data which are retained for historical, statistical, or for research purposes.⁷⁸ Furthermore, a person who retains records for historical, statistical and research purposes must ensure that the records are adequately protected against access and use for unauthorised purposes.

Retention of a record shall be prescribed by law or code of conduct. In the case where no law nor code of conduct prescribes a period, the record shall be retained for a period which affords the data subject an opportunity to request for access to the record.⁷⁹

At the expiration of the retention period, the data controller has the option to destroy, delete or re-identify the record in a manner that prevents its reconstruction in an intelligible form.

⁷⁵ Section 21 of Ghana's Data Protection Act

⁷⁶ Section 22 of Ghana's Data Protection Act

⁷⁷ Section 24 of Ghana's Data Protection Act

⁷⁸ Section 24(2) of Ghana's Data Protection Act

⁷⁹ Section 24(4) of Ghana's Data Protection Act

13.6 Further Processing

As indicated supra, processing of personal data must be for a specific and well-defined purpose thus, where further processing of the personal data is required, a data controller must ensure that the purpose for further processing is compatible with the purpose for collection.⁸⁰

13.7 Quality of Information

Overall, a data controller who processes personal data shall ensure that the data is complete, accurate, up to date and not misleading having regard to the purpose for the collection or processing of the personal data.⁸¹

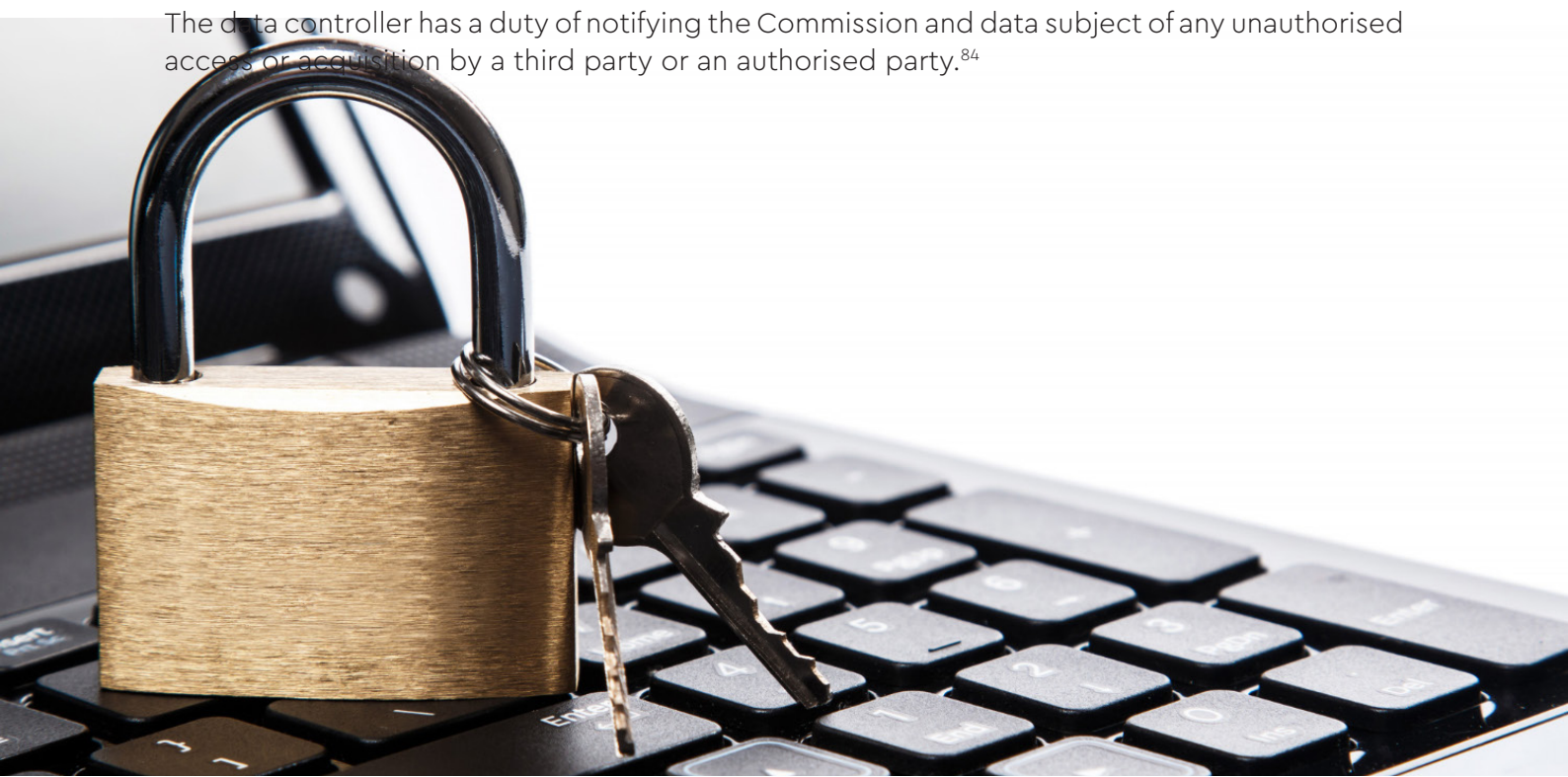
13.8 Prohibition of Processing of Personal Data

Processing of personal data of a child under parental control or the religious or philosophical beliefs, ethnic origin, race, trade union membership, political opinions, health, sexual life or criminal behavior of an individual is prohibited.⁸² However, processing of personal data can be done where the processing is necessary or the data subject consents to it.

13.9 Security

A data controller shall ensure the security of integrity of personal data in the possession or control of a person through the adoption of appropriate measures to prevent loss or unlawful access of personal data.⁸³

The data controller has a duty of notifying the Commission and data subject of any unauthorised access or acquisition by a third party or an authorised party.⁸⁴



⁸⁰ Section 25 of Ghana's Data Protection Act

⁸¹ Section 26 of Ghana's Data Protection Act

⁸² Section 37 of Ghana's Data Protection Act

⁸³ Section 28 of Ghana's Data Protection Act

⁸⁴ Section 31 of Ghana's Data Protection Act



14.0

ICT AND E-COMMERCE

14.1 General

With respect to ICT products and services, the regulatory requirements concentrate on electronic transactions (e-commerce) and consumer protection laws, data protection laws, cyber security laws and technology transfer regulations.

Some laws which altogether avail this protection to electronic consumers in Ghana includes **National Communications Authority Act, 2008 (Act 769)**, **Electronic Transactions Act, 2008 (Act 772)**, **Payment Systems and Services Act, 2019 (Act 987)**, **Cyber Security Act, 2020 (Act 1038)**, the **Data Protection Act, 2012 (Act 843)**, **Ghana Investment Promotion Centre Act, 2013 (Act 865)** and the **Technology Transfer Regulations, 1992 (L.I. 1547)**.

The National Communications Authority Act for instance establishes the National Communication Authority as the central body to licence and regulate communications activities and services in the country, and provide for related purposes. The Payment Systems and Services Act also seeks to amend and consolidate the laws relating to payment systems, payment services and to regulate institutions, which carry on payment service and electronic money business.

14.2 Technology Transfer

In Ghana, Technology transfer is governed by the **Ghana Investment Promotion Centre Act, 2013 (Act 865)** and the **Technology Transfer Regulations, 1992 (L.I. 1547)**.

Ghana Investment Promotion Centre (**GIPC**) is the institution in charge of the reviewing, registration and monitoring of all Technology Transfer Agreements (**TTA**) in Ghana. The GIPC Act categorises Technology Transfer Agreements into four (4) main forms namely:

- Agreements covering Industrial Property Rights
- Agreements for the provision Technical Services/Assistance
- Agreements covering the transfer Know-How
- Agreements for the provision of Management Services

The TTA's are to be entered into between enterprises and enterprises outside Ghana and they must be registered in Ghana by GIPC. Technology transfer agreements made and registered with the GIPC shall be governed by the laws of Ghana.

14.3 ICT Agreements and Standard Terms

In Ghana, ICT products include hardware, telecommunication services, internet services, software manufacturing, technology transfer, among others. The terms and conditions in Agreements relating to these can reflect standard contract and commercial terms. However, if such agreements are to cover services which run in Ghana, it is important for them to take into consideration laws on data protection, cyber security, anti-money laundering, and other pertinent laws. The Ministry of Communications and National Communication Authority (NCA) largely ensures these laws are complied with in Ghana. In addition to this, when it comes to Technology Transfer Agreements, the content of the Agreement must be in line with the provisions of the **Ghana Investment Promotion Centre Act, 2013 (Act 865)** and the **Technology Transfer Regulations, 1992 (L.I. 1547)**.

In the case of hardware or computer importers their agreements with their suppliers are governed by the usual commercial and contract law as applies to all other persons into importation business in Ghana, subject to customs and excise duties, tax, and other payments determined by the state.

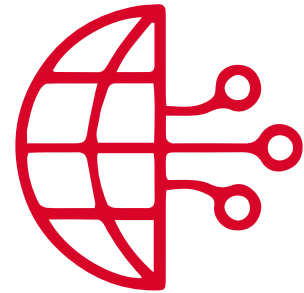
14.4 Sector-Specific Alternative Dispute Resolution ("ADR")

Disputes arising from any ICT related agreement can be subjected to the Courts or Alternative Dispute Resolution mechanism agreed on by the parties in the agreement. There exists no sector-specific dispute resolution forum for ICT disputes in Ghana.

In the case of Technology Transfer Agreement Disputes, registered in Ghana under the **Ghana Investment Promotion Centre Act, 2013 (Act 865)**, the **Technology Transfer Regulations, 1992 (L.I. 1547)** provides that the first step is for mutual discussions geared towards reaching an amicable settlement should be attempted. In the event of the parties to reach an amicable settlement, the parties may resort to arbitration in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law or within the framework of any bilateral and multilateral agreement on investment protection to which the Governments of the transferor and transferee are parties or in accordance with any other international machinery for the settlement of investment disputes agreed to by the parties.

14.5 The Internet and E-business

In Ghana, there is no specific law regulating all types of online businesses. However, some e-transactions including that carried out by the banks, telecommunication networks, and e-commerce businesses in Ghana are regulated by the Electronic Transactions laws, Payment Systems and Services laws, Cyber Security laws and the Data Protection laws. The telecommunication networks for instance are regulated by the National Communication Authority in the discharge of their business. They may also need to comply with some directives of the Bank of Ghana and other related agencies and laws in Ghana. The Ghana Revenue Authority also has regulations where Non – Resident persons who provide digital services for use and enjoyment in Ghana are required to pay VAT in accordance with the Value Added Tax Act 2013, Act 870. A citizen of Ghana who maintains a permanent home outside Ghana and lives in that home for the entire year of assessment, or a foreign national who is in Ghana for less than 183 days in any 12-month period is a non-resident for tax purposes.



The authorities mentioned here have the authority to investigate whether or not entities who are required to register with them or act in accordance with their regulations and directives are doing so and prescribe the sanctions made available by law to them against defaulting entities or persons. In addition to these, general contracting and commercial principles apply to businesses conducted online or offline in Ghana.

14.6 E-Commerce

E-commerce directives are provided for by the National Communication Authority, Ministry of Communications, Ghana Revenue Authority, Bank of Ghana, and related institutions. They fall on some laws including but not limited to electronic transaction law, payment systems law, cyber security laws for the protection of online consumers and other regulations to execute their mandate.

14.7 Consumer Rights

The laws as mentioned in this chapter provide some protection and rights to consumers in the e-commerce space. For instance, the Electronic Transactions Act imposes on suppliers a duty to disclose a defined list of information to consumers on their electronic platforms to ensure that the consumer makes an informed decision about a transaction. also offers consumers the right to cancel their orders within 14 days of receiving the goods, and seven days after concluding an agreement regarding services. However, the Act provides a long list of transactions, for which the statutory right to cancel does not apply, including foodstuffs, beverages or other goods that are intended for everyday consumption.

14.8 Electronic Signature

The **Electronic Transactions Act, 2008 (Act 772)** provides for the use of electronic signatures. Where the law requires for the provision of signatures, an electronic signature is deemed sufficient in fulfilling that legal requirement under some certain circumstances as contained in the Act. Affixing an electronic signature to a document or statement which needs to be notarised, acknowledged or verified is deemed sufficient under the Act. A corporate body is also deemed to have satisfied the requirement of affixing its corporate seal to a document if it affixes its electronic signature to the electronic document. Public agencies may indicate in a gazette the type of electronic signature and how it is to be affixed or incorporated into a document. In summary, in order for one to know whether or not an electronic signature can be used, the Electronic Transactions Act would need to be consulted.

14.9 Encryption

In Ghana, the **Electronics Transactions Act, 2008 (Act 772)** prohibits the rendering or sale of encryption services contrary the provisions of the Act. The National Information Technology Agency established under **National Information Technology Agency Act 2008 (Act 771)** facilitates the establishment of the Certifying Agency which has the mandate to issue licenses for encryption services, monitor the conduct, system and operation of encryption and authentication service providers, revoke or suspend licenses and to appoint auditing firms to conduct periodic audits on the licenses to ensure compliance with conditions of the licence,

In addition to these, the **Cyber Security Act, 2020 (Act 1038)** allows for the High Court of Ghana to issue an interception warrant in order to aid a Cyber crime officer to acquire means by which an electronic data protected by encryption or passwords may be decrypted or accessed.

14.10 Computer Crime

The **Electronics Transactions Act, 2008 (Act 772)** deems an attempt to commit crime, aiding, abetting, and conspiring to commit crimes, failure to prevent a felony, forgery and criminal negligence using any electronic medium (computers inclusive) as a crime in the manner in which such acts amount to a crime under the **Criminal Offences Act of Ghana, 1960 (Act 29)**, subject the necessary modification needed in the circumstances. Also, the **Cyber Security Act, 2020 (Act 1038)** allows for persons who commit crimes in the cyber space using information technology, computers and other electronic gadgets to have their assets frozen, among other penalties.

14.11 Online Gambling

The Ghana Gaming Commission (GGC) is the sole regulatory body for the Ghanaian gambling industry with the exception of lottery, which is overseen and regulated by the National Lottery Authority (NLA). They were established by the **Gaming Act, 2006 (Act 721)** and the **National Lotto Act, 2006 (Act 722)** respectively. The purposes of the GGC and the NLA have been to regulate, supervise and control operators running businesses involving games of chance and lottery respectively, in the country. These laws however are yet to be amended to provide stringent rules for the regulation of online gambling and other games of chance. Nonetheless, the GGC and NLA still regulates same with the existing laws and issue directives for compliance by online gaming or lottery operators from time to time.





15.0

INTERNET TECHNOLOGY AND TELECOMMUNICATIONS

15.1 Registration and Regulation

A company which offers public telecommunication and internet services in Ghana is required to be licensed by the National Communication Authority. The license will be granted pursuant to an application in a form prescribed by the National Communications Authority. The license is usually granted for a period specified by the Authority on the license and is subject to renewal on expiration. A company which applies for the issuance or renewal of a license will be required to pay application fees which are provided by the authority.

There are currently four companies licensed to provide public telecommunications and internet services in Ghana.

15.2 Privacy of Subscribers Data Shared Over the Telecommunications Network

Each network provider is required to by law to maintain a database with a subscriber identification module which is meant to keep details sufficient for the identification of every subscriber. Each subscriber identification module contains data which includes the name, date of birth (for natural persons), date of incorporation or registration for a company or partnership residential address as well as details from any valid identification documents.

The network provider is prohibited from using the information contained in the subscriber identification module database for any purpose other than is prescribed by law. Neither the telecommunications company nor any of their employees or agents is also permitted disclose this information to any third party except they are authorized by law or by a court order to disclose such information. Subscriber identification information may also instance be disclosed to third party companies for direct marketing purposes with the prior written consent of the subscriber.

The Electronic Communications Regulations also contains provisions meant to protect the privacy of information shared over an electronic communications network. Regulation 6 makes it an offence for any person other that the sender or intended recipient of a transmitted message to steal, intercept, interfere with, alter, modify, divert, unlawfully disclose, decode or attempt to decode messages transmitted over the electronic communications network. In addition, the Regulations prohibits a person from using an electronic communications network to store information or gain access to information stored in the terminal equipment of a subscriber unless the subscriber is provided with sufficient information on the purposes of the storage or access to that information, and the subscriber is given the opportunity to object to the storage or access to that information. The law also requires network operators to employ international best practices in the industry to promote privacy, secrecy and security of all communications carried or transmitted by the operator or through the communications system of the operator, and the personal and accounts data related to subscribers.

The Ghanaian Data Protection Act, 2012 also places an obligation on all persons who control and process personal data to ensure that data is processed in a lawful and reasonable manner without infringing on the privacy rights of the data subject. Telecommunication and internet service providers as data processors and controllers are subject to the obligations contained in the Data Protection Act and are to ensure that customer's data which is shared over the telecommunications network and compiled and stored by the network provider is protected and not disclosed except in accordance with the provisions of the law.

15.3 Data Retention

The Data Protection Act contains provisions regarding retention of data by Data Controllers and Processors. The Act prohibits a data controller who records personal data from retaining the personal data for a period longer than is necessary to achieve the purpose for which the data was collected and processed unless the retention of the record is required or authorized by law, reasonably necessary for a lawful purpose related to a function or activity, is required by virtue of a contract between the parties to the contract, or where the data subject consents to the retention of the record. This notwithstanding, a data controller or processor may be allowed to retain data for historical, statistical or research purposes.

Where a person retains records for historical, statistical or research purposes, the person is required to ensure that the records that contain the personal data are adequately protected against access or use for unauthorized purposes.

Where a person uses a record of the personal data of a data subject to make a decision about the data subject, the person is required to retain the record for a period required or prescribed by law or a code of conduct. On the expiration of the retention period, the data controller will be required to destroy, delete or de-identify the record in such a manner that prevents its reconstruction in an intelligible form.

Where there is no law or code of conduct that provides for the retention period, the person is allowed to retain the record for a period which will afford the data subject an opportunity to request access to the record.

15.4 Data Breach Notification

According to the provisions of the Data Protection Act, where there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by an unauthorized person, the data controller or a third party who processes data under the authority of the data controller is required to notify the Data Protection Commission and the data subject of the unauthorized access or acquisition. The notification must be made as soon as reasonably practicable after the discovery of the unauthorized access or acquisition of the data. The notification to a data subject must be communicated by registered mail to the last known residential or postal address of the data subject, electronic mail to the last known electronic mail address of the data subject, by placement in a prominent position on the website of the responsible party, publication in the media; or any other manner that the Commission may direct.

The notification to the data subject must provide sufficient information to allow the data subject to take protective measures against the consequences of unauthorized access or acquisition of the data. The information must include, if known to the data controller, the identity of the unauthorized person who may have accessed or acquired the personal data. The data controller will also be required to take steps to ensure the restoration of the integrity of the information system.

The data controller shall delay notification to the data subject where the security agencies or the Commission inform the data controller that notification will impede a criminal investigation. However, where the Commission has grounds to believe that publicity would protect a data subject who is affected by the unauthorized access or acquisition of data, the Commission may direct the data controller to publicize in the specified manner, the fact of the compromise to the integrity or confidentiality of the personal data.

15.5 Unsolicited Communications

The Electronic Transaction Act of 2008 prohibits any person from sending unsolicited electronic communications to a consumer without obtaining the prior consent of the consumer except where the communication is sent by an electronic communications provider in relation to the service.

Further, the Electronic Communications Regulations provides that a person who wishes to send or cause another to send an unsolicited communication to a subscriber for direct marketing purposes by means of a fax machine, an automatic calling system, a call, an electronic mail, or text messaging must first obtain the consent of the subscriber before doing so. When a person sends or causes another to send an unsolicited communication with the prior consent of the subscriber, the person must include in the communication the name and either the address or telephone number on which the person can be reached free of charge. Furthermore, where the unsolicited communication is by means of an electronic mail the person is required to ensure that the person's identity is not concealed and must provide a valid address to which the subscriber can end a request to the person to desist from sending the subscriber any further communication.

The National Communications Authority has a Code of Conduct that governs the transmission of Unsolicited Electronic Communications. The Code defines unsolicited electronic communications as communications which are sent to a recipient without obtaining that recipient's consent and includes any form of electronic messages sent over a public telecommunications service to an electronic address, including but not limited to fax, SMS/MMS and pre-recorded voice/video messages.

A person who sends unsolicited electronic communications to a consumer without first obtaining the written consent of the consumer commits an offence which is punishable by law.





16.0

Legal Forms of Doing Business

Business can be conducted in Ghana by a Ghanaian holding company, a subsidiary, or a branch. In comparison to the legislation of many other Africa nations, the Ghanaian company law permits (non-resident) businesses to establish external companies (branches) and subsidiaries through a broad and open company structure.

16.1 External Company (Branch)

An external company (also known as a branch) is a legal entity incorporated outside of the Republic of Ghana with a physical presence in Ghana.

A branch office is a physical place that functions as an extension of a foreign entity. It is completely owned by a foreign entity, and its taxes and other administrative matters are handled in accordance with the laws of Ghana.

A branch office gives an international company more freedom, but it also exposes it to extra-legal risks. Unlike a representative office, however, registration usually necessitates the presence of a manager or someone else on-site who is responsible for the company's operations. A citizen or permanent resident of Ghana is usually required to complete the registration.

The following information and documents are necessary for an external company's registration:

- Name of company (name of head office entity);
- Nature of business;
- Name and details of local manager;
- Authorised capital (for head office);
- Issued capital (for head office);
- Address of principal place of business in Ghana;
- Address of registered office in country of incorporation;
- Name and address of process agent;
- Memorandum and articles of association of head office, duly notarised by a notary public in the country of registration;
- A power of attorney executed in favour of the local manager, which must be notarised as well; and
- Certificate of incorporation of the head office, duly notarised in the country of registration.

All these particulars should be accompanied by a statement duly notarised in the jurisdiction of origin of the company establishing the external company in Ghana.

16.2 Subsidiary

A subsidiary is a legal entity that is owned by the parent firm but works independently. The parent firm is protected from legal liability in the host country because of this status.

Under the Ghana Companies Act 2019, (Act 992) this is a company limited by shares. A subsidiary might be owned completely or partially by a Ghanaian or a non-Ghanaian. A Ghanaian subsidiary can be founded and owned by one or more shareholders, who can be individuals or legal entities and can be of any national.

The documentation/information required for the registration of a subsidiary includes the following:

- Name of company;
- Nature of business of the company;
- First directors (a minimum of two is required), of whom one must be present in Ghana at all times;
- Number of shares with which the company should be registered (shares of no par value);
- Name and address of auditor;
- Registered office and principal place of business and postal addresses;
- Authorised number of shares;
- Stated capital;
- Issued shares;
- Name and address of subscribers/ shareholders; and
- Name of company secretary.

Stamp duty

A 0.5% stamp duty is payable on the stated capital of the company.

16.3 Partnership

A partnership is an agreement in which two or more people pool some or all of their resources, talents, or industry in order to make a profit that will be split among the partners. Non-trading partnerships, commercial partnerships, and limited partnerships are the forms of partnerships in Ghana.

To register a partnership, the Register General's Department requires a copy of the partnership agreement and a statement signed by all partners, detailing the name of the partnership, nature of business, address of the principal place of business and all other places in Ghana where the business is carried on, names and addresses of the partners, date of commencement, and details of any charges requiring registration.

Upon registration, the Registrar issues a certificate of incorporation, which includes the partners' names as well as the fact that their responsibility is limitless. A notice of registration is published in the Gazette. It is prohibited to conduct business without a partnership's registration, which must be updated every year. Rights derived from a contract are enforceable against the partnership during unauthorized activity, but not against the other party.

16.4 Sole Proprietorship

A sole proprietorship is a type of business in which the owner and manager of the company are the same individual. The proprietor is the single owner of the business concept and has complete control over the company. They are liable for all debts and earnings incurred by the company. Sole proprietorships are more frequent in Ghana than any other type of business.

16.5 Statutory/Regulatory Registration

Depending on the industry in which they will operate, businesses must also register with other regulatory bodies (listed below) in addition to the Registrar General Department.

16.6 Ghana Revenue Authority (GRA)

For tax purposes, all entities doing business in Ghana must register with the GRA.

16.7 Social Security and National Insurance Trust (SSNIT)

By law, every employer must register with the SSNIT and pay Tier 1 pension contributions on behalf of their employees.

They must also register for Tier 2 pension contributions on behalf of their employees with a private pension fund manager.

16.8 Ghana Investment Promotion Centre (GIPC)

All companies with foreign participation are required to register with the GIPC under the GIPC Act of 2013 (Act 865) .

The following are the GIPC Act's minimum capital requirements:

- a. A joint venture with at least 10% Ghanaian participation: In a joint venture with at least 10% Ghanaian participation, the foreign partner must contribute at least US\$200,000 (in cash or capital goods) to the project.
- b. A completely owned foreign entity: A wholly owned foreign entity must have a minimum of US\$500,000 in foreign equity capital in cash or capital goods relevant to the investment.
- c. Trading entity

A non-Ghanaian who owns all or part of a trading firm must have a minimum equity capital of US\$1,000,000 in cash or capital goods related to the venture.

16.9 Minerals Commission (MC)

To participate in the mining industry, all mining and mine support service businesses must register with the MC. The registration entitles them to various benefits, including support in the form of an expatriate immigration quota, import duty exemption, and the ability to invoice, receive, and make payments in foreign currency, subject to Bank of Ghana permission.

16.10 Ghana Free Zones Board (GFZB)

Non-mining, non-oil, and non-timber companies can apply for a GFZB license to operate as a free zone entity. A company must export at least 70% of its goods or services to be eligible for this. By registering with the GFZB, the company can get a ten-year tax holiday; after that, it must pay corporate tax of 25% on local sales and 15% on exports.

16.11 National Communication Authority (NCA)

Businesses importing telecommunications equipment, such as servers, cellular phones, fax machines, cordless phones, and radio equipment, will need to register with the NCA.

16.12 Petroleum Commission (PC)

Contractors, subcontractors, sub-subcontractors and all entities in the upstream oil and gas sector must register with the PC and pay registration costs.

As a foreign investor, you must form a joint venture (JV) with an indigenous Ghanaian firm (IGC) that owns at least 5% or 10% of the JV, depending on whether you're a contractor or a subcontractor.





17.0

Labour
Law

The relationship between the employer and employee is governed and regulated by various laws as follows:

- a. The 1992 Constitution of the Republic of Ghana
- b. The Labour Act 2003 (Act 651) – employees in the Armed forces, Police Service and Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act are not covered by the Labour Act and/or regulations. These Agencies are covered by specific Acts related to the respective areas of operation.
- c. The Labour Regulations 2007 (li 1833)
- d. ILO Conventions that Ghana is a signatory

17.1 Types of Employment

There are several types of employment recognized under the relevant employment laws in Ghana. Some of which are set out in Section 6 of the Labour Act 2003 (Act 631) referred to as Labour Act, as follows:

- a. Contract from month to month, remuneration at a monthly rate
- b. Contract from week to week, remuneration at a weekly rate
- c. Remuneration at a rate other than monthly or weekly rate – contract determinable by will

Other types of contracts are:

- a. Full time employment
- b. Part time employment
- c. Casual /temporary contract
- d. Consultancy contract (contract for service)
- e. Apprentices and trainees' contract

An employment contract may either be verbal or in writing. The validity of any employment contract shall be decided based on an agreement of the terms of the contract by both parties to the contract (employer/employee).

17.2 Terms

Employers have a legal duty per section 13 of the Labour Act to give the employee within two months of commencement of the employment relations, written statement of particulars of employment.

These particulars outline the main terms and conditions of the employment relations. The following are the essential statement of particulars:

- a. Name of Employer
- b. Name of Employee
- c. Date of first appointment
- d. Job title and/or grade

- e. Initial base rate of pay, methods and intervals of pay
- f. Hours of work
- g. Periods of holidays and details of holiday pay.
- h. Conditions related to incapacity to work due to sickness or injury and the details of sick pay (if any).
- i. Details of social security or pension scheme.
- j. Notice period applicable to both parties (employee/employer)
- k. Disciplinary rules applicable
- l. Grievance procedure for resolution of disputes
- m. Overtime pay (if any).

The Statement of Particulars of Contract of Employment must be dated and signed by both the employer and employee.

Once the Statement of Particulars have been duly executed, they form the bedrock of the employment relationship and any significant breach of one or more of the terms by either party goes to the root of the contract or may make the relationship unworkable.

17.3 Probationary Period

The Labour Act makes no specific mention of a mandatory probationary period. However, the Labour Regulations, 2007 (li 1833) referred to as Labour Regulations provides guidance. It states that where a contract of employment provides for a probation period, the duration and other rules governing the said period must be clearly outlined.

In practice, employers are recommended to set out clearly defined probation period in the employment contract as this period is critical for the success of the employment relationship. Both parties may use the period to assess the suitability of the job and other working conditions and make informed decisions of the future of the employment relationship.

During this period, it is advisable for both parties to agree clear standards of performance and conduct that the employee will be assessed for the duration. Employees are also recommended to communicate their reasonable expectations of their employers.

Notice period during this period is left for determination at the enterprise level. However, whatever the notice period (if any) must be spelt out in addition to circumstances under which, a first probation period may require extension (if any).

End of probation period formalities must also be clearly articulated so that both parties are left in no doubt whether the employee has been confirmed in the appointment.

At the end of the probation period, either party may end the contract and give the requisite notice or pay notice in lieu (if applicable).

The Labour Act provides that such termination shall not fall under Unfair termination as defined in the Act. The import of this provision is that employers may end at the end of probation without the challenge of a potential lawsuit from the employee for unfair termination under the Labour Act.

17.4 Rights and duties of the Employee

Sections 10 and 11 of the Labour Act, outlines the rights of the employee as follows:

- a. Right to Wages/Benefits agreed
- b. Right to resources need to complete jobs
- c. Right to resign
- d. Right to work under satisfactory, safe and healthy conditions
- e. Right to have rest, leisure and reasonable limitation of working hours and period of holiday with pay as well as remuneration for public holiday
- f. Right to form a trade union
- g. Right to be trained and retrained for the development of his or her skills
- h. Right to receive information relevant to his or her work
- i. Right to be protected from sexual harassment.

The 1992 Constitution also gives the employee protection from all forms of discrimination in the workplace

Employees have a duty to:

- Work conscientiously in the lawfully chosen occupation
- Report to work regularly and punctually
- Enhance productivity
- Exercise due care in the execution of assigned work
- Obey lawful instructions about the organisation and execution of his or her work
- Take all reasonable care for the safety and health of fellow workers
- Protect the interest of the employer
- Take proper care of the property of the employer entrusted to the worker or under the immediate control of the worker

17.5 Rights and duties of the Employer

Employers have rights and duties in respect of their relationship with employees as follows:

- a. Right to employ a worker, discipline, transfer, promote and end the employment of the worker
- b. Right to formulate policies, execute plans and programmes to set targets
- c. Modify, extend or cease operations
- d. Right to decide the type of products to make or sell and the prices of its goods and services

The duties of employers are as follows:

- Provide work and appropriate raw materials, machinery, equipment, and tools
- Pay the agreed remuneration at the time and place agreed on in the contract of employment or collective agreement or by custom without any deduction except that allowed by law or agreed between the employer and the worker.

- Take all practical steps to ensure that the worker is free from risk of personal injury or damage to his or her health during and during the worker's employment or while lawfully on the employer's premises.
- Develop the human resources by way of training and retraining of the workers.
- Provide and ensure the operations of an adequate procedure for discipline of the workers.
- Give the workers with a copy of the worker's contract of employment
- Keep open the channels of communication with the workers; and protect the interest of the workers

17.6 Prohibition of restrictive conditions of Employment

An employer shall not in respect of any person seeking employment, or of persons already in his employment:

- a. Require that person to form or join a trade union or to refrain from forming or joining a trade union of his or her choice
- b. Require that person to take part or refrain from participating in the lawful activities of a trade union
- c. Refuse to employ the person because of that person's membership of a trade union
- d. Promise the person any benefit or advantage for not taking part in trade union activities
- e. Discriminate against the person on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics.

17.7 Restraint of trade (non-Competition)

Employers wishing to restrain employees from collaborating with competitors after disengagement must ensure that a restraint of trade clause is agreed and inserted in the employment contract at inception. The Labour Act makes no specific provision of this. Any such provision must therefore be agreed by both parties in writing and signed by the parties to give it a binding effect in case of a dispute.

Judicial decisions on non-competition matters have shown that courts are skeptical of restraint of trade clauses that are onerous for the employee, in general. Thus, mere reference to a non-competition clause in either a collective labour agreement and/or internal rules/regulations, may not suffice to bind the employee, in case of a dispute.

The general position of the courts is that an employee must not be deprived from freely engaging in their trade/profession for an unreasonable length of time. It is therefore imperative for restraint of trade clause not to be for longer than is absolutely needed to protect a legitimate interest and must not cover a wide geographical area.

The justification for a restraint of trade clause may be to protect a legitimate business interest or to protect customers connections/trade secrets.

A request by the employer for the enforcement of a non-competition clause may be restricted or denied by the Court if any employee will be for example, become too restricted by a restraint of trade clause when trying to find a new position.

17.8 The National Labour Commission

The National Labour Commission was set up under the Labour Act, Section 135 to ease the settlement of industrial disputes. It is an independent body which settles labour disputes and promotes a healthy industrial environment for employment sustainability and growth.

The Commission mainly engages in alternative dispute resolution – arbitration and mediation to resolve disputes between parties to the employment contract.

Until 2018, the Courts were ousted from starting a dispute resolution related to unfair termination, redundancy related disputes and/or collective bargaining issues. The courts have affirmed that litigants may go ahead to court to mount actions without first routing through the labour commission. Notwithstanding, the Labour Commission is still a popular choice for collective bargaining, unfair termination and redundancy related disputes because of the relatively low cost of litigation in comparison to the courts, among others.

Section 138 (1) of the Labour Act outlines the functions of the Commission as follows:

- a. To ease the settlement of industrial disputes
- b. To settle disputes
- c. To investigate labour related complaints in particular, unfair labour practices and take such steps as it considers necessary to prevent labour disputes
- d. To keep a database of qualified persons to serve as mediators and arbitrators
- e. To promote effective labour co-operation between labour and management.

The commission has the power to receive complaints from workers, trade unions and employers or employers' organisations. They can also require an employer to give information and statistics concerning the employers' organisations.

The Commission can require an employer to give information and statistics concerning the employment of its workers and the terms and conditions of their employment in a form and manner the Commission considers necessary, among others.

17.9 Termination

Termination is loosely defined as the process of disrupting the employer/employee relationship. The term is universally used for various forms of disengagement, cessation, separation, close or break of the contract of employment. The Labour Law allows for various circumstances that brings an end to the employment relationship, under the umbrella of termination as follows:

- a. Resignation
- b. Retirement
- c. Death
- d. Termination with notice
- e. Termination without notice – summary dismissal
- f. Redundancy

17.9.1 Termination with Notice

If the contract of employment makes provision, an employer may end the contract of employment by giving the required under the contract of employment or the statutory minimum notice as stipulated under Section 17 of the Labour Act. In some instances, private sector employers may end without an obligation to provide reasons for such termination.

Under Section 17 of the Act provides as follows:

- where termination is made by mutual consent, any pay due to the worker, but which has been deferred must be paid upon termination.
- Compensation must also be made in respect of sickness or accident
- In the case of foreign contract, expenses and necessaries for the journey and repatriation expenses of the worker and accompanying members of his family or addition to all or any payments specified under paragraphs (a) to (c) of Section 17 of the Act.

Regarding termination without assigning reason, public service employees are exempt and employers in the public service must thus end only for just cause. Article 191 (b) of the 1992 Constitution provides that:

- A member of the public service shall not be dismissed or removed from office or reduced in rank or otherwise punished without just cause.

Although some employers may not have to assign reasons for termination, should the affected employee decide to challenge the termination either at the Labour Commission or the Courts, the employer must prove that the reason and procedure for the termination was fair. Section 53 (4) of the Labour Act makes this mandatory for the termination to be considered fair.

Section 62 of the Labour Act stipulates fair termination as:

- The worker is incompetent or lacks qualification in relation to the work for which he/she is employed
- Proven misconduct
- Redundancy
- Legal restriction imposed on him or her prohibiting him or her from the work for which he or she is employed. An example being termination because of inability to work arising from a pandemic
- By the worker on grounds of sexual harassment or ill treatment (constructive dismissal)

Section 63 of the Labour Act sets out the grounds for unfair termination as follows:

- If the employer does not prove that the reason for the termination is fair, and/or that the termination was made following a fair procedure
- Joining or taking part in trade union activities
- Pregnancy or absence from work due to maternity leave
- Not having the current level of qualification needed which is different from what was needed at the time of his or her engagement
- Worker's disability, illness, injury certified by a recognized medical practitioner.
- Complaints of sexual harassment in the workplace

17.9.2 Termination without Notice – Summary Dismissal

Although dismissal is under the general umbrella of termination, the Labour Act, does not provide specific grounds to call for dismissal without notice. The grounds and procedure are left to every establishment to determine. However, such grounds and/or procedure must follow sections 15 and 62 of the Labour Act, which enjoins establishments to ensure that the reason and procedure must be fair.

Summary dismissal or termination without notice is defined as a fundamental breach by the employee which goes to the root of the employment contract and makes the relationship between the employer and employee unworkable.

Section 30 (3) of the Labour Act, gives employers the right to end without notice as far as there is a clearly spelt out written provision in the employee's collective agreement or conditions of service, detailing the circumstances, procedure and offences that may trigger termination without notice by the employer. Where an employer has such a right, dismissal may take place even for a first-time offence that is considered a fundamental breach that goes to the root of the employment contract. This also falls in line with the International Labour Organisation (ILO) Termination of Employment Recommendations 1963 (No 119).

17.9.3 Remedies for unfair termination

Section 64 of the Labour Act, outlines some remedies as follows:

A worker who claims that the employment of the worker has been unfairly terminated by the worker's employer may present a complaint to the Commission and where the complaint is proven, the Commission may order reinstatement, compensation or both.

17.9.4 Redundancy

The Legal framework that governs redundancy in Ghana are the 1992 Constitution, The Labour Act, 2003, Act 651 and the Labour Regulations.

Section 65 of the Labour Act, Act 651, provides that where an employer contemplates that the introduction of major changes in production, programme, organisation, structure or technology of an undertaking are likely to entail terminations of employment of workers in the undertaking, that employer is mandated to submit in writing to the Chief Labour Officer not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out.

The employer must also consult the Trade Union concerned or employee representatives (as applicable) on measures to be taken to avert or minimise the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Additionally, where an employment is closed down or undergoes an amalgamation and that arrangement is likely to sever the relationship between a worker and an employer immediately before the close down and this is likely to result in the worker being unemployed or suffering a diminution in the terms and conditions of employment, that worker is entitled to be paid compensation which is known as the redundancy pay.

The Act makes no provision for specific amounts as compensation. Thus, the amount of compensation or redundancy pay is subject to negotiation between the employer and the worker or representative on the one hand and the Trade Union or the worker on the other hand. Any dispute arising from the amount of redundancy pay and the terms and conditions of the payment may be referred to the Labour Commission whose decision shall be final.

17.9.5 Managing staff redundancies – Best Practice Steps

Redundancy is usually a severance of the working relationship, started by the employer. Usually, it occurs when a role is no longer needed. You should only consider making redundancies if part or all the organisation is:

- closing, or has already closed
- changing the types or number of roles needed to do certain work
- changing location

If there are concerns about an employee's conduct or performance, it is advisable to follow a disciplinary or capability procedure.

When considering making redundancies, the employer must first check:

- why you think redundancies are necessary
- what issues you're trying to solve?
- other options that might be available

a. Look at other options

Before starting a redundancy process, an employer should consider all options to reduce or even avoid redundancies.

For example, an employer may consider the following:

- offer suitable alternative employment
- offer voluntary redundancy
- change working hours
- move employees into other roles
- let go of temporary or contract workers
- limit or stop overtime
- not hire any new employees

b. Offer of alternative employment

Employers must move employees selected for redundancy into other jobs within the organisation instead (offer 'suitable alternative employment').

Employers must find any available jobs in the organisation and talk to the affected employees to see if they agree they are suitable.

If a role is suitable, the employer should offer it instead of redundancy. In the absence of this, the employee could make a claim to the Labour Commission for unfair dismissal or start a suit in Court for unfair dismissal.

Affected employees should not have to apply for the role. But if more than one employee is

interested in the same role a fair process selection process must be followed.

When an affected employee is offered another role, it must be:

- put in writing
- offered before their current contract expires.
- a different role to the one they are currently doing – you will need to explain how it's different
- start within 4 weeks of their current role ending

c. Trial periods

Employees must be given a reasonable trial period if they accept a new role. If they need more time to train for the role, an agreement can be reached for a longer trial period. It must be agreed in writing and have a clear end date.

The trial period should start after they have worked their notice period and their earlier contract has ended.

This avoids any confusion or disputes over dates if the trial does not work out. It is a good idea to set out the dates for the trial in writing.

d. If an employee turns down an alternative role

If an employee refuses an offer for a suitable alternative role, or turns it down after the trial period, they need to have a valid reason it is not suitable.

Examples of reasons could include:

- the job is on a lower pay
- health issues hinder them from doing the job
- they have difficulty getting there, for example because of a longer journey, higher cost or lack of public transport
- it would cause disruption to their family life

If the employee has a valid reason to turn down the job, they will be entitled to redundancy pay.

But if the employee does not have a valid reason for turning down the job, the employer could refuse to pay their redundancy pay. The employer will need to be able to prove that the employee's decision was unreasonable if they make a claim to the National Labour Commission or the Law Courts.

Redundancy can create tricky situations and conversations. The employer should think about how to support:

- employees at risk of redundancy
- managers who are breaking the news
- the people leading the consultation
- employee representatives
- those staying on

You can support staff by providing:

- counselling

- added face-to-face meetings
- help getting financial advice
- clear plans
- time off for those selected for redundancy to look for new jobs or get training

It is often forgotten that those staying on experience stress from seeing colleagues and friends being made redundant. They will also be part of a changing workplace and might feel uncertain about what the work and their roles will look like in future.

e. Help staff find another job or training

Employers must allow employees you have made redundant a reasonable amount of time off during their notice period to look for another job or to undertake training.

f. Offer voluntary redundancy

Employers can give employees the choice to put themselves forward for voluntary redundancy.

It is your decision whether to accept the volunteers, considering the wider needs of the organization. It is a good idea to make this clear to the employees early.

g. Avoid discrimination

Where an employer gives the choice of voluntary redundancy, it is advised to:

- offer it as widely as possible, not necessarily just to those at risk of redundancy
- not to pressure or single anyone out
- to select employees in a fair way

This can avoid the risk of indirect discrimination. For example, it could be age discrimination if you only select older employees.

h. Change working hours

There could be ways for an employer to save costs by having staff work more flexibly.

Employers should always talk with employees and try to reach an agreement first.

For example, employees could be offered:

- homeworking
- job shares
- to work fewer hours

If it is written in their employment contracts, employees must be notified that they need to:

- stop working for a while (known as a 'temporary lay-off')
- work fewer hours (known as 'short-time' working)

Lay-offs and short-time working are temporary solutions and must not be a permanent change to agreed working hours.

i. Where there are changes to the written employment terms

Both parties must agree to the changes to the terms of the employment contract.

j. Move employees into other parts of the organisation

Employers should explore the possibility of moving employees into different areas of the organisation ('redeploy') to avoid redundancies. For example, by looking at:

- what transferable skills the staff has
- if there are other vacant or new roles in the organisation that require those skills

Where redundancies are imperative in the interest of the business, employers should check the existence of the following:

- a Collective Agreement with a Trade Union and/or Management Conditions of Service with details of processes to follow

Following a fair redundancy process is imperative and must include:

- collectively consulting staff via the trade union or employee representatives (in the case of Management or non-unionised staff)

Redundancies in some instances may be unavoidable, but by collaborating with employees, employers could find ways to save jobs and better understand how to plan.



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